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AUTHOR Lew, Gena A., Ed.
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ABSTRACT

This collection of policy papers is intended to educate and inform business and community leaders, policymakers, the Asian Pacific community, and the general public about the complex issues and far-reaching implications of the affirmative action debate on Asian Pacific Americans as well as all Americans. Essays are grouped into sections on discrimination and the need for affirmative action legislation, promoting diversity in higher education, eliminating barriers in employment and contracting, and the impact of anti-affirmative action measures. The following essays are included: (1) "Separate but Equal: Discrimination and the Need for Affirmative Action Legislation" (Karen K. Narasaki, with additional essays under the same title by Rockwell Jaowen Chin and Brian Cheu, Juanita Tamayo Lott, Dale Minami, and Ron Wakabayashi); (2) "The Asian American Factor: Victim or Short-sighted Beneficiary of Race-Conscious Remedies?" (Henry Der); (3) "Affirming Affirmative Action" (Chang-Lin Tien); (4) "Affirmative Action under Attack" (David R. Barclay); (5) "The Persistence of Inequality" (Paul M. Igasaki); (6) "Rebuild LA" (Linda Wong); (7) "Public Contracting Opportunities for Minority & Woman Entrepreneurs" (Edwin M. Lee and essays under the same title by Stewart Kwoh, Kathryn K. Imahara, and Elsie V. Hui, William H. Marumoto, and Benjamin Seto); (8) "Impact of Anti-Affirmative Action Measures" (Antonia Hernandez); (9) "Affirmative Action Choices" (Frank H. Wu); (10) "We Won't Go Back" (Lillian Galedo, with another essay under the same title by Kent Wong); (11) "The Face of Affirmative Action" (Warren T. Furutani) and a closing essay under that title by Jackie Young, Governor of Hawaii. (SLD)

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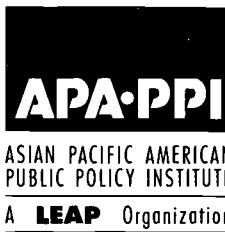
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Perspectives on Affirmative Action

...and its impact on
 Asian Pacific Americans

CONFIDENTIAL

"separate but equal?"
**Discrimination & the Need for
 Affirmative Action Legislation**

"racial preferences?"
Promoting Diversity in Education

"a level playing field?"
**Eliminating Barriers in
 Employment & Contracting**

"moving toward a colorblind society?"
**Impact of Anti-Affirmative
 Action Measures**

a publication of the LEAP Asian Pacific American Public Policy Institute

Race. It determines much of who you are and how you are perceived by others. Race is a constant undercurrent in all of our daily interactions. Whether the American public acknowledges it or not, our volatile state of race relations is constantly simmering under the "beautiful mosaic" facade of the most diverse society in the world.

The tenuous issue of race is the primary factor underscoring the current debate over affirmative action. Although the debate has been narrowly framed around the notions of eliminating "preferential treatment," achieving a "colorblind society," and returning to a "level playing field," the struggle over affirmative action is merely a symptom of this nation's larger debate over race relations in a shifting social and economic climate.

The debate goes far beyond affirmative action and will continue as long as there is anxiety over the changing status quo driven by persistent institutionalized racism.

Asian Pacific Americans must be involved in the larger debate, as well as in the affirmative action issue now before us. We have a large stake in the final outcome. Too often we have willingly swallowed the model minority myth and further distanced ourselves from other historically discriminated minority groups. We do not always recognize that the gains of African Americans in the civil rights movement were crucial in paving the way for the rapid strides that Asian Pacific Americans, as well as other minority groups, have been fortunate to make in recent years.

Our diverse communities are in the unique and curious position of being both "helped" and "hindered" by affirmative action. Many perhaps would point to Asians as living proof of the American Dream. But to think that Asian Pacific Americans have succeeded in this country and will be untouched by anti-affirmative action measures is extremely misguided.

While some Asian Pacific American groups are well-represented at Ivy League universities, others who are less fortunate struggle to overcome the model minority stigma and are enabled

by affirmative efforts to attend local colleges at minimal expense.

In the workplace, the widespread perception of Asian Pacific Americans as easily assimilated, hardworking overachievers who lack management skills often translates into the very real persistence of a double-edged sword: we are considered neither an under-represented minority group, nor are we considered worthy of leadership positions. Caught in this no-man's land, Asian Pacific Americans are trapped by the glass ceiling with little recognition or support from whites or other minorities.

And after decades of exclusion in public contracting, Asian Pacific Americans are slowly beginning to gain entry and to establish business relationships, primarily due to affirmative programs that eliminate discriminatory barriers.

All Americans should remember and learn from this society's extensive history of overt discrimination, much of which is shockingly recent. Further, we should all acknowledge the persistence of discrimination today, whether cloaked in anti-immigrant hysteria, the glass ceiling, or unfounded claims of reverse discrimination.

And finally, we must realize the compelling need for the continuation of affirmative programs to guard against persistent discrimination. Affirmative action, though not the final solution to ending racism, is a valuable tool to ensure that discrimination does not occur and to protect equal opportunity for all qualified individuals.

The LEAP Asian Pacific American Public Policy Institute has become increasingly concerned with the intensity of attacks on our ethnic communities. We are disturbed that as Asian Pacific Americans, we are often misrepresented, resulting in a broad public perception of Asian Pacific Americans as "the model" for other minorities to emulate.

Further, we are especially alarmed at the growing frequency and popularity of measures to recklessly eradicate affirmative action programs, such as the recent vote by the UC Board of Regents and Governor Pete Wilson's attack on his

own state's hiring and contracting programs.

Because our mission is to achieve full participation and equality for Asian Pacific Americans, LEAP has adopted a formal position to strongly support the continuation of affirmative action programs and for the continued participation of Asian Pacific Americans in these programs. To further our goal of educating others on issues central to the Asian Pacific American community, LEAP is publishing and disseminating this diverse sampling of essays written by members of our community who find it necessary to speak out in support of affirmative action.

We hope that this collection of policy position papers will educate and inform business and community leaders, policymakers, our Asian Pacific American constituents, and the general public alike. This publication's intent is to introduce readers to the complex issues and the far-reaching implications of the affirmative action debate on Asian Pacific Americans, as well as all Americans.

Even after more than 30 years of legislated non-discrimination, racism stubbornly persists. We are far from a colorblind society; the playing field is hardly level. We are now standing on the brink of a powerfully diverse and just society. We hope that the following essays will help readers recognize that, in the words of Justice Harry A. Blackmun, "In order to get beyond racism, we must first take account of race," and to reaffirm the conviction that affirmative action is a valuable and necessary step to achieving true diversity.

Our country is destined to be the most diverse society in the world. We must take every effort to ensure that our institutions embrace this diversity so that we can best meet the challenges of our future.



J.D. Hokoyama Gena A. Lew
President Editor

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Affirmative action encompasses any measure, beyond simple termination of discriminatory practice, which expands opportunity by permitting the consideration of race, national origin, sex, or disability, along with other criteria, where discrimination has been proven to exist. Affirmative action as we know it today is a conglomeration of a process of fragmented court orders, congressional legislation, and presidential mandates.

1941 President Franklin D. Roosevelt requires defense contractors to pledge nondiscrimination in employment on the basis of race, creed, color or national origin.

1954 In *Brown v. Board of Education*, the Supreme Court overrules the “separate but equal” doctrine and declares racially segregated public schools unconstitutional, implicitly approving the race-conscious remedy of integration.

1961 President Kennedy creates the President’s Committee on Equal Employment Opportunity. Federal executive agencies are told to integrate their workforce.

1964 Congress passes the Civil Rights Act. Title VII of the law makes it illegal for public and private sector employers to discriminate against workers based on race, color, religion, sex, or national origin.

1965 President Johnson issues an executive order requiring federal contractors to “take affirmative action” to ensure that they do not discriminate against workers because of race, creed, color, or national origin. Two years later, gender is added to that list.

1969 President Nixon sets goals for hiring minority contractors. His administration later presses colleges to set goals for increasing their numbers of minority students and faculty.

1971 In *Griggs vs. Duke Power Co.*, the Supreme Court rules that hiring standards that effectively exclude minorities are illegal unless employers show them to be a job-related business necessity.

1972 Congress passes the Equal Employment Opportunity Act, allowing civil lawsuits against companies for discriminatory employment practices.

1972 Congress passes the Educational Amendments of 1972. Title IX prohibits sex discrimination in federally-funded educational institutions, requiring them to take specific steps to encourage individuals of the previously excluded sex to apply for admission.

1978 In *Bakke v. University of California*, the Supreme Court issues its first major decision on affirmative action, upholding the right to use race as a factor in university admissions, but prohibiting quotas.

1979 In *United Steelworkers of America v. Weber*, the Supreme Court holds that voluntary, private, race-conscious affirmative action plans are legal, so long as they are temporary and do not preclude employment opportunities for whites.

1980 In *Fullilove v. Klutznick*, the Supreme Court upholds Congress’ authority to mandate limited use of racial and ethnic criteria in awarding public contracts to eliminate barriers to minority access.

1989 *Richmond v. Croson* represents the Supreme Court’s first application of the “strict scrutiny” standard, ruling that city and state officials may not steer contracts towards minorities, except to make up for a clear history of discrimination and to advance a compelling state interest.

1989 In *Atonio v. Wards Cove Packing Co.*, the Supreme Court shifts the burden of proof from employers to employees, making it difficult for workers to challenge workplace discrimination. The court also rules that discrimination cannot be proven by solely relying on statistical evidence.

1990 In *Metro Broadcasting v. F.C.C.*, the Supreme Court reaffirms the constitutionality of race-conscious remedies adopted by Congress that achieve important governmental objectives. In this case, expanding minority participation in broadcasting was found to achieve the objective of enhancing broadcast diversity.

1991 Congress passes the Civil Rights Act of 1991 in response to *Wards Cove* and similar employment discrimination cases. The Act reinstates the legitimacy of using statistical disparity, and places the burden of proof back on employers. The Act, however, contains an ironic provision, exempting the *Wards Cove* corporate defendant from coverage.

1995 The Federal Glass Ceiling Commission confirms the existence of a glass ceiling that effectively excludes the advancement of women and minorities, and finds that white males continue to dominate Corporate America, occupying 95-97% of senior management positions.

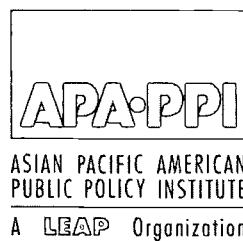
June 1, 1995 California Governor Pete Wilson issues an executive order dismantling most of the state’s affirmative action efforts in hiring and contracting.

June 12, 1995 In *Adarand Contractors v. Peña*, the Supreme Court requires federal agencies to adhere to the “strict scrutiny” standard as imposed on state and local governments in the 1989 *Croson* case.

July 19, 1995 After a four-month review of federal affirmative action programs, President Clinton says affirmative action has been “good for America” and that the nation should “mend it, not end it.”

July 20, 1995 Board of Regents of the University of California votes to stop using “race, religion, gender, color, ethnicity or national origin” as criteria in its admissions policies and hiring and contracting practices.

August 10, 1995 Governor Pete Wilson files lawsuit with the California state Court of Appeals, declaring his own state’s affirmative action hiring and contracting plans unconstitutional.



Discrimination and the Need for Affirmative Action Legislation

Issue
Separate
but equal?

Karen K. Narasaki — National Asian Pacific American Legal Consortium

Karen K. Narasaki is the Executive Director of the National Asian Pacific American Legal Consortium, a nonprofit organization whose mission is to advance the legal and civil rights of Asian Pacific Americans. Ms. Narasaki has served in Washington, D.C. for the past four years as an advocate for Asian Pacific concerns.

At present, there are approximately 7.3 million Asian Pacific Americans who constitute about 3 percent of the U.S. population. This number is rapidly increasing, making Asian Pacific Americans the fastest growing minority group today. Yet very little is commonly known about Asian Pacific American history or current circumstances, and much of what is known is plagued by myths and stereotypes.

The Asian Pacific American experience is replete with instances of institutionalized discrimination, yet some Americans believe that Asian Pacific Americans should not be covered by affirmative action programs. This belief ignores not only the historic legacy of discrimination, but the limits on the progress of Asian Pacific Americans today.

For the reasons set forth below, the National Asian Pacific American Legal Consortium strongly supports the continuation of affirmative action programs and the participation of Asian Pacific Americans in those programs.

A History of Discrimination

An examination of American history reveals that Asian Pacific Americans have been the target of historic institutionalized discrimination. This officially sanctioned discrimination led to a history of anti-Asian violence and the internment of American citizens of Japanese descent during World War II.

Immigration and Naturalization

In 1790, a law was passed allowing only "free white persons" to become citizens. Even after the law was changed to include African Americans, similar legislation to include Asian Americans was rejected.¹ The Supreme Court upheld the laws making Asian immigrants ineligible for citizenship.² The last of these laws was not repealed until 1952.³

The Chinese Exclusion Act of 1882 which prohibited the immigration of Chinese laborers, epitomizes this country's racist immigration laws.⁴ In 1907, anti-Asian sentiment culminated in the Gentleman's Agreement limiting Japanese immigration. Asian immigra-

tion was further restricted by the Immigration Act of 1917 which banned immigration from almost all countries in the Asia-Pacific region and by the Immigration Act of 1924 which banned immigration of persons ineligible for citizenship. In addition, the Tydings-McDuffie Act of 1934 placed a quota of 50 Filipino immigrants per year.

Employment and Business

Asian immigrants who managed to enter the U.S. became the victims of other forms of discrimination. As early as the 1850's, states enacted various laws which targeted Asians by taking advantage of the discriminatory nature of naturalization laws. California imposed a "foreign miner's tax" which taxed non-citizen miners.⁵ As intended, virtually all of the \$1.5 million collected under the "foreign miner's tax" came from Chinese miners.

Other laws were less subtle, such as the 1862 California tax on Chinese living in the state and the state law prohibiting California corporations and government entities from hiring any Chinese employees. The California Alien Land Law Act of 1913 is another striking example. This law was primarily directed at Japanese immigrant farmers and prohibited persons ineligible for citizenship to purchase land. In 1920 it was amended to bar long term leases and purchasing through American-born children. In 1923, it was amended again to make contracts to grow and harvest crops illegal. Twelve other states adopted similar laws, the last being Utah, Arkansas and Wyoming in the 1940s. Upheld as constitutional, the last law was not repealed until 1962.⁶

Similarly, in 1922, the Supreme Court upheld a law that aliens ineligible for citizenship cannot form corporations,⁷ and in 1945 California enacted legislation denying commercial fishing licenses to persons ineligible for citizenship.⁸ At the time, Asians were the only racial group ineligible for citizenship.

The case *Yick Wo v. Hopkins*⁹ is another prime example. A San Francisco Laun-

"separate but equal?"

dry Ordinance which prohibited laundries from having a wood construction was enforced only against Chinese laundries. The license renewal applications of Mr. Yick Wo, along with over 200 other Chinese laundry owners, were all denied despite the fact that they had operated at the same sites for over 20 years. In contrast, the license renewal applications by non-Chinese laundries were approved, even those with wooden buildings. San Francisco also enacted special taxes targeted at Chinese laundries. From 1873 to 1884, the Board of Supervisors enacted 14 regulations targeting Chinese laundries. In a similar vein, San Francisco passed the Cubic Air Ordinance requiring that living spaces have at least 500 cubic feet of space per person and this law was enforced only in Chinatown.¹⁰

Employment in the Civil Service was barred to legal permanent residents for close to a century until 1976, when the

discrimination claim. This company who had maintained separate hiring channels, and segregated eating facilities and housing for Asian Pacific American and Alaskan Native workers, persuaded Alaskan Senator Frank Murkowski to insert a section into the Act to exclude their case, *Atonio v. Wards Cove Packing Co.*, from coverage.

Education

Asian Pacific Americans have been historically discriminated against in education as well. Similar to African Americans at that time, Asian Pacific Americans were segregated in the public school system. In 1860, California barred Asian Pacific Americans from attending its public schools entirely. After the California Supreme Court ruled that this was unconstitutional, the State set up a system of "oriental" schools and the California Supreme Court upheld the constitutionality of "separate but equal" schools for Asian

tory impact on Asian Pacific Americans and other minorities. The law school at Berkeley changed its policies as part of a consent decree. Some programs at UCLA were cleared — others are still under review.

Progress Continues to be Limited by Discrimination

Affirmative action programs have played a critical role in opening up opportunities for women and minorities, but full equal opportunity has not yet been achieved. White men are 48% of the college educated workforce,¹⁴ but hold over 90% of the top jobs in the news media,¹⁵ and are over 90% of officers of American corporations and 88% of the directors,¹⁶ 86% of partners in major law firms,¹⁷ 85% of tenured college professorships,¹⁸ 80% of the management level jobs in advertising, marketing and public relations.¹⁹

Recruitment, outreach, training, and other measures have opened some doors for Asian Pacific Americans, but barriers remain as evidenced by some of the following statistics:

- Asian Pacific Americans are underrepresented in construction unions. Nationwide, Asian Pacific Americans constituted less than 1% of construction unions in 1990, although they were 3% of the population. In New York, where Asian Americans are almost 4% of the population, they were only 0.3% of the membership of construction unions.²⁰
- Less than 0.3% of senior executives in the United States are of Asian descent.²¹ U.S. born Asian American men were between 7 and 11% less likely to be in managerial occupations than white men with the same education, work experience, English ability, region, marital status, disability and industry work.²²
- Asian Pacific Americans are still absent from public sector jobs where their presence would greatly enhance the quality of the public services to the community. For example, Asian Pacific Americans are only 2.5% of the Los Angeles County Sheriff's office, but 10% of the overall population of Los Angeles County. Only 1.4% of public school teachers in the country are Asian Pacific American.²³

Voluntary affirmative action programs are far less costly and disruptive to both the corporation and its workers than litigation.

Supreme Court held that the law was national origin discrimination in *Hampton v. Wong Mow Sun*.

Starting in 1988, the Coast Guard began enforcing a long abandoned statute restricting aliens from operating commercial fishing vessels solely against Vietnamese immigrants.¹¹ Another impetus for discrimination against Asian Pacific Americans began with the passage of the Immigration Reform and Control Act in 1986, which fined employers for hiring undocumented immigrants. A U.S. General Accounting Office study found that one in five employers began discriminating against Asian Pacific Americans and Latinos upon the passage of that Act's employer sanctions provisions.¹²

Three years later, Congress passed the Civil Rights Act of 1991 in response to a series of Supreme Court decisions that had eroded protections against employment discrimination. For the first time, a civil rights law contained a special interest provision for a corporation that was a defendant in a class action race

Pacific American students in 1906. In 1927, the U.S. Supreme Court upheld Mississippi's exclusion of Asian American students from white schools.¹³

In the early 1970s, frustrated Chinese American parents brought a class action suit against San Francisco Unified School District, alleging that unequal educational opportunities resulted from the District's failure to establish a program to address the limited English proficiency of students of Asian ancestry. In *Lau v. Nichols*, the Supreme Court ruled that the District's failure to provide English language instruction violated the Civil Rights Act of 1964.

In the 1980s, Asian Pacific Americans charged universities such as Harvard, UCLA and U.C. Berkeley with maintaining an admissions cap on Asian Pacific Americans who were having to score higher on admissions tests than whites to win admissions. The Department of Education cleared Harvard when an admissions policy favoring alumnae children was found to be permissible, despite its clearly discrimina-

- Asian Pacific Americans are only 1.83% of newspaper journalists.²⁴
- Whites with college degrees make almost 11% more than Asian Pacific Americans with college degrees and white high school graduates make 26% more than Asian Pacific American high school graduates.²⁵ U.S. born Asian Pacific American doctoral scientists and engineers earn only 92% of that of white doctoral scientists and engineers.²⁶

Moreover, gender discrimination persists. While there have been significant advances for women, 95% of the senior managers of the Fortune 1000 industrial companies are male despite the fact that women are over half of America's adult population and close to half of the workforce.²⁷ In the Fortune 2000 industrial and service companies, only 5% of senior managers are women and virtually all of these are white women.²⁸

Women remain severely under-represented in most nontraditional occupations, but even where they are present in significant numbers they still face barriers. For example, women are 23% of lawyers, but only 11% of partners in law firms.²⁹

Even more disturbing, the number of sex discrimination and sexual harassment charges is on the increase. Charges filed with the Equal Employment Opportunity Commission rose over 20% from 1993 to 1994.³⁰

Affirmative Action for Asian Pacific Americans

In employment, affirmative action programs include recruitment and outreach efforts like advertising in ethnic media and additional search efforts to ensure qualified Asian Pacific Americans are part of the talent pool. It means the abolishment of total reliance on the "old boys network." It means reviewing hiring and recruitment policies to adjust or remove requirements that are unnecessary for the given job category — for example, unreasonable height restrictions. It means reviewing promotion policies to eradicate biases and providing training programs to give all employees a fair chance at promotions.

In cases where there is a particularly bad history of discrimination, it means the use of flexible goals and timetables as

benchmarks by which to measure good faith efforts toward eliminating severe underrepresentation of qualified Asian Pacific Americans in specific job categories. For example, in 1988, the San Francisco Fire Dept. agreed to a race-con-

This is particularly a problem for Asian Pacific Americans who have historically been underserved by the legal community and tend to leave a company or institution rather than to litigate. Many are unaware of their rights, face other

Whites with college degrees make almost 11% more than Asian Pacific Americans with college degrees

scious hiring and promotion policy to remedy past discrimination against women, Asian Pacific Americans and other minorities.³¹

In education, affirmative action programs include grants and graduate fellowship programs aimed at helping Asian Pacific Americans move into fields where their participation has been discouraged or where there is an unmet community need. They also include outreach and education programs to increase the participation of Asian Pacific Americans in apprenticeship training in the skilled trades.

For Asian Pacific American business owners, affirmative action programs include laws that encourage or require government agencies and contractors to do business with qualified minority-owned companies, as well as programs providing financial, management and technical assistance to minority business owners.

Affirmative Action Remains an Important Tool

Opponents of affirmative action must either mistakenly believe that discrimination no longer exists or that there are better alternatives. The most often suggested alternatives are to increase enforcement of anti-discrimination laws or focus on economic disadvantage rather than race or gender.

First, increased enforcement of anti-discrimination laws does not obviate the need for affirmative action programs. Significant increases in enforcement is unlikely. Few can afford the cost and time involved in litigation against corporations and institutions with vastly greater resources. Moreover many professionals and other workers are afraid to make claims and risk being labeled a troublemaker.

barriers to accessing the legal system or believe that litigation will hurt their individual reputations.

Moreover, government agencies cannot do it alone. The EEOC already has 100,000 cases in its backlog. In addition, affirmative action is often the most appropriate remedy when a company has been found to have discriminatory practices by litigation. Voluntary affirmative action programs are a far less costly and disruptive to both the corporation and its workers than litigation. Such programs improve opportunities for all women and minorities in the corporation, while damage awards or other nonaffirmative action remedies only help the few who sue.

Second, focusing solely on economic disadvantage ignores the existence of plain, old fashioned racism and sexism. Race, national origin and gender discrimination occur against minorities and women regardless of socio-economic standing.

Economic disadvantage as a criteria will not work in most employment settings. It would particularly not be relevant in areas of great concern to Asian Pacific Americans — the elimination of glass ceiling discrimination or wage disparities where minorities and women are discriminated against based on their race, gender and national origin — not their income.

Finally, affirmative action addresses more than just the problem of unequal opportunity for individuals. It also ensures that government services and societal programs fully serve all communities. For example:

- Underserved communities find their needs better met when law enforcement reflects the diversity of these communities;

- Medical and academic research has become more wide ranging with the addition of women and minorities in those areas; and
 - Businesses are better able to compete in the marketplace because affirmative action has brought in workers with diverse skills, background and knowledge of their customers.
22. Civil Rights Issues Facing Asian Americans in the 1990s, U.S. Commission on Civil Rights, p. 133 and n. 18.
 23. *The Washington Post*, July 7, 1992.
 24. American Society of Newspaper Editors 1994 employment survey.
 25. *The Washington Post*, "Asian/Pacific Islanders Trail Whites in Earnings -Comparable Education Fails to Close the Gap," September 18, 1992, (based on U.S. Census data).
 26. *The State of Asian Pacific America: Economic Diversity, Issues & Policies*, "Scientists and Engineers," Ong & Blumenberg p. 188, n. 23,
 LEAP Asian Pacific American Public Policy Institute (1994).
 27. U.S. Dept. of Labor, Women's Bureau, "Working Women Count!" at 10 (1994).
 28. Federal Glass Ceiling Commission [FGCC], *Good for Business: Making Full use of the Nation's Human Capital*, iii-iv (1995).
 29. Curan and Carson, American Bar Foundation, "The Lawyer Statistical Report" (1994).
 30. Data compiled from unpublished EEOC records by National Women's Law Center.
 31. See *U.S. v. City and County of San Francisco*, 696 F. Supp.1287 (N.D. Cal. 1988).
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The attack against affirmative action is an extension of the current anxiety many Americans have about the restructuring of the American economy. Clearly, middle management jobs and good-paying blue collar jobs are disappearing, but not because of affirmative action. Americans would be better served if their political leaders had the courage to confront the real challenges rather than trying to shift responsibility by scapegoating women and minorities. ■

1. P. Chew, William and Mary Law Review, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, p. 13 (1995).
2. See *Ozawa v. U.S.*, 260 U.S. 178 (1922); *U.S. v. Bhagat Singh Thind*, 261 U.S. 197 (1923); and *In re Ah Yup*, 1 F. Cas. 223 (Cir. Ct. D. Cal. 1878).
3. H. Kim, Ed., *Dictionary of Asian American History, Asian Americans and American Immigration Law* by T. Knoll, pp. 52-3 (1986)
4. Civil Rights Issues Facing Asian Americans in the 1990s, U.S. Commission on Civil Rights, p. 7 (1992).
5. S. Chan, *Asian Americans — An Interpretive History*, p. 46 (1991).
6. See *Porterfield v. Webb*, 263 U.S. 225 (1923); *Terrace v. Thompson*, 263 U.S. 197 (1923).
7. *Yamasaki v. Hinkle*, 260 U.S. 199 (1922).
8. See *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410 (1948).
9. 118 U.S. 356 (1886).
10. Civil Rights Issues Facing Asian Americans in the 1990s, U.S. Commission on Civil Rights, p. 7
11. See *Vietnamese Fishermen Ass'n of Am. v. Yost*, No. C 89-3522WWS, 1989 U.S. Dist. (ND Cal. 1989).
12. Civil Rights Issues Facing Asian Americans in the 1990s, U.S. Commission on Civil Rights, at 149 fn. 104.
13. Civil Rights Issues Facing Asian Americans in the 1990s, U.S. Commission on Civil Rights, p. 9. See *Gong Lum v. Rice*, 275 Y.S. 78 (1927).
14. *Statistical Abstract of the United States*, 1993, Table No. 234 at 154.
15. *Newsweek*, April 24, 1989; *Newsday*, August 1, 1994 (quoting American Society of Newspaper Editors).
16. M. Lowery, "The War on Equal Opportunity," *Black Enterprise*, February 1995.
17. *National Law Journal*, August 9, 1994.
18. *Orlando Sentinel*, March 11, 1994; *Statistical Abstract of the United States*, 1994, Table No. 637 at 407-410.
19. *Statistical Abstract of the United States*, 1994, Table No. 637 at 407-410.
20. Civil Rights Issues Facing Asian Americans in the 1990s, U.S. Commission on Civil Rights, p. 153 (1992).
21. Korn/Ferry International, *Korn/Ferry's International Executive Profile: A Decade of Change in Corporate Leadership*, (1990), Table 61, p. 23.

Rockwell Jaowen Chin & Brian Cheu — National Asian Pacific American Bar Association

Rocky Chin is a Supervising Attorney at the New York City Commission on Human Rights and the Co-Chair of the Civil Rights Committee of NAPABA. With over 20 years of experience in Asian American affairs, he lectures in Asian American Studies at Hunter College and serves on numerous boards.

Brian Cheu is a Discrimination Representative for the Human Rights Commission of the City and County of San Francisco, the Co-Chair of the Civil Rights Committee of NAPABA, and Co-Chair of the Gay Asian Pacific Alliance. Prior to the Commission, Mr. Cheu was Supervising Attorney for a mental health advocacy law project.

The history and experience of Asian Pacific peoples in America is one of blatant exclusion, incarceration, prejudice and anti-Asian violence. Two examples from history are particularly illustrative. Under the Chinese Exclusion Act of 1882, Chinese were specifically excluded by federal law from emigrating to the United States. This and other federal immigration laws, along with the anti-Chinese movement which galvanized public opinion with its vicious images of Chinese as the "yellow peril," contributed to the continuing perception that Chinese and other Asian Pacific peoples are not American but "aliens" and "foreigners." Sixty years later, in 1942, persons of Japanese ancestry in America were rounded up and incarcerated in concentration camps with no evidence to support the massive denial of constitutional rights and civil liberties.

Congress eliminated the final vestiges of these unfair immigration laws in 1965, and since then there has been dramatic growth in the Asian Pacific American population. Congress also finally dealt with the issue of Japanese internment, when it passed the Civil Liberties Act of 1988 and redressed the wrongs done to persons of Japanese ancestry in America during World War II.

Today, these examples are not referred to as "affirmative action," primarily because the term has been narrowed in scope to define certain specific types of programs to desegregate the workplace and facilitate the entry of Americans

into jobs where they have historically been excluded. But for Asian Pacific Americans, it is important that we acknowledge that both the 1965 Immigration and Naturalization Act and the 1988 Civil Liberties Act could not have come about without broad support from the civil rights movement, the willingness of Congress and the President to right wrongs, the vigorous support of African and Latino leaders, and the support from our own communities.

Affirmative action programs were predicated on a common understanding that discrimination based on race and gender was pervasive in American society and that eradicating such discrimination required more effective measures. While affirmative action evolved into a key part of America's national policy to end discrimination, the efforts to desegregate the workplace have been modestly successful, and minorities and women are still underrepresented in many industries and professions. The bipartisan Glass Ceiling Commission reports that "despite 30 years of affirmative action, 95% of senior management positions are still held by white men, who constitute only 43% of the work force."

For Asian Pacific Americans, other minorities, and women, breaking the glass ceiling is a major goal, yet statistics still reveal the glass ceiling is a very real obstacle. Asian Pacific Americans are underrepresented on corporate boards and in management. In public con-

tracting, hard evidence shows the disparity between opportunities for minority contractors and opportunities

reject the view that Asian Pacific American should be held to a *higher standard* than majority race applicants. More-

made from a pool of applicants *already determined to be qualified for the job or position*, a fact often disregarded by critics of affirmative action. Many factors make up a hiring decision, the rewarding of a contract or the admission of a student. Race and gender should continue to be utilized as factors in those fields where minorities and women continue to be underrepresented. Affirmative action measures are essential to the process of promoting equal opportunity whether in the legal system, the workplace, schools or other institutions. NAPABA supports affirmative action programs and policies that seek to promote diversity and to remedy past or current discrimination or to prevent discrimination from recurring in the future based on race, ethnicity, nationality, gender or disability, and NAPABA opposes any legislation that seeks to limit the use of affirmative action. ■

for similarly situated majority contractors. In San Francisco, an MBE program that included Asian architects as an MBE category was eliminated after years of successful bidding. During the following year, when bid preferences were no longer available to these Asian MBEs, not one company was awarded a government contract despite the supposed goodwill built up during the years of mandatory MBE bid preferences.

Many Asian Pacific Americans have raised concerns and even doubts about the benefit of programs which limit the number of Asian admitted to educational institutions. Others have looked at the statistics where Asian Pacifics are the largest minority group on many private and public campuses and have argued that Asian Pacific Americans no longer should benefit from affirmative action programs because we may now be "overrepresented." Until the late 1970s, there were few Asian Pacific Americans in educational institutions. The large percentages of Asians in the University of California system have come about since 1980 and are due in large part to the change in demographics and the acknowledged emphasis Asian Pacific Americans place on education. Asian Pacific American applicants are, in fact, often held to higher standards for GA and SAT scores than many other groups, including whites. But it is still unknown whether these graduates are getting the jobs and job advancements commensurate with their educational levels and whether they are breaking through the glass ceiling.

We must be open to the idea that affirmative action programs should assist underrepresented groups to reach parity. In some instances, there may be historical reasons for creating more specific goals and timetables. However, the playing field is truly level, we

over, in the overall decision-making process diversity can and should be a factor.

In summary, affirmative action has received strong bipartisan support from Congress, executive political support from eight successive Presidents and continued endorsement from the business community. It does not mean "quotas" nor should it result in the lowering of selection or hiring standards. Hiring or admissions decisions are

Juanita Tamayo Lott — Tamayo Lott Associates

Juanita Tamayo Lott is the President of Tamayo Lott Associates, a public policy consulting firm based in the Washington, D.C. area and a former Division Director at the U.S. Commission on Civil Rights. Ms. Tamayo Lott joined the LEAP Board of Directors in January 1995.

On the 30th anniversary of Executive Order 11246 which mandated affirmative action with respect to federal contractors¹, the debate on affirmative action is being narrowly cast in three ways: which populations are affected, what constitutes affirmative action, and how long affirmative action programs should continue. Such a limited view is short-sighted and pits group against group. The current questioning, assault, and/or defense of affirmative action should instead be viewed in terms of two larger policy issues: 1) the role and responsibility of a democratic government to its residents, and 2) a balance between social justice and profits in a post-industrial, capitalistic society.

Affected Populations

The current debate has shifted from the underrepresentation and under-utilization of protected or historically disadvantaged groups to possible adverse impact on the white population, particularly white males. More specifically the black population is cast as unworthy beneficiaries and white males as victims. Rarely are other populations mentioned. Less attention has been given to the fact that affirmative action has embraced a sizable proportion of

the American population — other racial/ethnic minorities, including Asian Pacific Americans, women, the disabled population, and socially and economically disadvantaged individuals, regardless of race.

Recently, white women, the primary beneficiaries of affirmative action programs, have entered the debate in support of current federal policy.² Asian Pacific Americans and other communities must also articulate the fact that affirmative action is a win-win situation. Asian Pacific Americans must reaffirm that the goal of equal opportunity, embedded in law, distinguishes the United States from other nations. Many generations of all our foreparents have fought bitterly with their time, money and lives to uphold this principle. We must continue their struggle for our children and future generations.

Too much of the focus on affirmative action is on the entry of people of color and white women into schools, disciplines, and occupations traditionally dominated by native born, white males. Civil rights policies have opened new opportunities for all workers and students. New educational programs (e.g.

ethnic studies, women's studies, multicultural curricula) and non-traditional occupations (e.g. equal opportunity specialists, diversity trainers, curriculum specialists) have been created and developed as a result of implementing affirmative action.

Types of Affirmative Action

The debate on specific affirmative actions has similarly been reduced to mean quotas and preferential treatment of minorities and white women at the expense of white males. In fact, there are several distinct types of affirmative action as statutes and case law make clear. These include the concept of "making whole" the victims of illegal discrimination in employment or contracting, and special recruitment, training and education for people of color and/or white women to enhance their

individuals, without fear or favor of being members of a particular group. According to Van Alstyne, "In respect to affirmative action and race, one portion of Title VII. . . forbids ways of classifying applicants or employees that tend to affect their chances although not meant to do so. The law imposes an obligation to review employment to take care that they are, in fact, job related."⁴ For example, weight and height requirements may appear to or actually discriminate against Asians and Latinos. This warrants a case-by-case investigation rather than a universal decision.

Despite the obviously wide latitude of permissible and flexible affirmative actions, the current and foreseeable political and media trend is to restrict what constitutes affirmative actions.

...there is now more subtle and not-so-subtle discrimination against racial and ethnic minorities and women as manifested in the rise of exclusion, violence, and hate crimes against these populations in the 1990s.

ability to compete for jobs, promotions, or contracting opportunities.

William Van Alstyne identifies other uses of non-racial affirmative action,³ primarily as a matter of attitude in thinking well of persons and treating persons as individuals rather than representatives of dominant or subordinate groups.

However, affirmative action may also lead to steps to ensure that discrimination does not occur within organizations. A prime example is Executive Order 11246 issued by President Richard Nixon. This policy requires that federal contractors engage in no racial discrimination and, more importantly, take meaningful affirmative action to ensure that discrimination does not occur. This policy seeks the better protection of each person from discrimination that might otherwise occur (for example, in a white-owned enterprise against blacks or its converse, in a black-owned enterprise against whites).

A third type of affirmative action is the removal of gratuitous discrimination or barriers to equal opportunity for all in-

This pattern is coupled with increasing efforts to reduce the length of time necessary for affirmative actions.

How Long Should there be Affirmative Action?

An implicit assumption of affirmative actions as remedies is that they are temporary as well as specific to situations. An argument for ending the policy is its success in increasing presence since 1965 of racial and ethnic minorities and white women in educational institutions and occupations from which they had been historically excluded. Critics of affirmative action contend that it has reached the point of diminishing returns, given a decrease in black college admissions. Faulty implementation of a few affirmative action plans has been used to argue for the elimination of the policy in general.

The reality is that there is now more subtle and not-so-subtle discrimination against racial and ethnic minorities and women as manifested in the rise of exclusion, violence, and hate crimes against these populations in the 1990s. Occupational and educational gains made in the seventies and early eight-

ies have plateaued or even eroded. More often there is a bipolarity of successes and failures in these communities by education, income, and occupation.

The assault on affirmative action is not an isolated phenomenon but must be viewed in the context of other attacks on policies and programs related to these populations, most notably immigration reform and welfare reform at national, state and local levels. Of equal concern are systematic efforts to diminish the ability to obtain quantifiable data via national surveys and censuses. It is ironic that there is a movement to delete data by race and sex just as these populations are increasing and becoming more diverse.

The post Civil War reconstruction era, when blacks were no longer slaves but citizens, was followed by decades of Jim Crow laws which continued to place blacks and other racial and ethnic minorities in subordinate and segregated positions until the Civil Rights Movement of the 1950s and 1960s. Today, the situation is just as precarious. With a tight global, post-industrial economy, fewer individuals are able to afford higher and continuing education necessary to compete economically (gains in education, employment, and income in the last three decades are vulnerable today and are unraveling within a generation). Only thirty years after landmark national decisions on human and civil rights and barely over 100 years after reconstruction, we find that non-discrimination and equal opportunity are tenuous laws. We cannot allow the reconstruction history to be repeated.

One final instructive note about affirmative action was made in 1981 under a Republican administration by the U.S. Commission on Civil Rights:

The conclusion that affirmative action is required to overcome the discrimination experienced by persons in certain groups does not in any way suggest that the kinds of discrimination suffered by others — particularly members of Euro-ethnic groups — is more tolerable than that suffered by protected groups. A problem remedy approach insists only that the remedies be tailored to the problem, not that the only remedy for discrimination is affirmative action to benefit certain groups. Affirmative action plans are not attempts to establish a sys-

tem of superiority for minorities and women, as our historic and ongoing discriminatory process too often have done for white men. Nor are measures that take race, sex and national origin into account designed to stigmatize white men, as do the abusive stereotypes of minorities and women that stem from past discrimination and persist in the present. Affirmative action plans end when non discriminatory processes replace discriminatory ones. Without affirmative action intervention, discriminatory processes may never end.

Properly designed and administered, affirmative action plans can create a climate of equality that supports all efforts to break down the structural, organizational and personal barriers that perpetuate injustice. They can be comprehensive plans that combat all manifestations of the complex process of discrimination. In such a climate, differences among racial and ethnic

groups and between men and women become simply differences, not badges that connote domination or subordination, superiority or inferiority.⁵ □

- 1 Affirmative action was first given official status in 1965 by Executive Order 11246, where Federal contractors were required to comply with the 1964 act and to take affirmative action to eliminate continuing effects of past discriminations. The Office of Federal Contract Compliance Programs (OFCCP) was created to monitor contractor responses to this order.
- 2 Women comprise over half of the college educated population and between one third and one-half of students in medical and law schools. At the entry levels, full-time women employees make \$.95 of full time men employees. This is up from \$.63 only two decades ago.
- 3 William W. Van Alstyne, "Affirmative Action and Racial Discrimination under the Law: A Preliminary Review," in Selected Affirmative Action Topics in Employment and Business Set Asides, volume 1, a consultation/hearing of the United States Commission on Civil Rights, March 6-7, 1985.
- 4 Ibid pp 182-3
- 5 U.S. Commission on Civil Rights, Affirmative Action in the 1980s: Dismantling the Process of Discrimination, A Statement of the United States Commission on Civil Rights, Clearinghouse Publication 70, Washington, D.C., November 1981.

Dale Minami — Coalition of Asian Pacific Americans

Dale Minami is a partner with Minami, Lew & Tamaki, a San Francisco-based law firm. Mr. Minami is a founder of the Asian Law Caucus, the Asian American Bar Association, and the Coalition of Asian Pacific Americans. He has been active in civil rights issues for the past 25 years.

The debate raging over affirmative action has become a victim of exaggerated rhetoric and political posturing. While its opponents have cast affirmative action only as "preferences" or "quotas," it is, in reality, a diverse mixture of remedies ranging from aggres-

vor of white males. The bipartisan U.S. Glass Ceiling Commission found that after 30 years of equal opportunity programs, 95% of senior management positions remain occupied by white males who constitute only 43% of the total work force. Asian Pacific Americans are

After 30 years of equal opportunity programs... Asian Pacific Americans are a blip on the screen at 0.3% of top management ranks.

sive efforts to increase the candidate pool of qualified minorities and women to the more controversial "set-asides" requiring minority participation in public contracts. All such remedies were designed to help counter the effects of past discrimination and virtually none exclude non-minorities. By portraying affirmative action as only a "quota" or "preference," the anti-affirmative action lobby has misled the public and created a chasm of misunderstanding and racial friction.

For example, some opponents talk about "leveling the playing field," but

a blip on the screen at 0.3% of top management ranks. Discarding affirmative action programs will tilt the playing field further in favor of white males. It is ironic that many of the opponents of affirmative action who are now calling for a "level playing field" or a "colorblind" society did little to advance the cause of civil rights in the past.

The rhetoric also obscures the basic flaw in the criticism of affirmative action — that an objective means to judge "merit" or "qualifications" exists. The central core of the anti-affirmative action thesis is that the "most qualified"

persons are denied their due as if some objective standard could rate the "most qualified." In reality, very few jobs could be reduced to objective standards relevant to job performance. Except for Olympic track and field events where the winner of the high jump is clearly the "most qualified," in virtually every other job or educational opportunity, subjective criteria are applied. And as long as race, sex and national origin discrimination exists, such subjective criteria will be applied against women and people of color.

Without affirmative action programs establishing *goals*, not quotas, subtle discrimination injects an unfair disadvantage to women and minorities into the "most qualified" equation. During the fifteen plus years I practiced employment discrimination law, I saw many examples of Asian Pacific Americans with excellent leadership and work records, but were denied promotions because they were "not assertive," "lacked leadership qualities," or "fared poorly in the oral interview." Of course, these were stereotypes and pretextual reasons for elevating another person — usually white and male, usually a friend of the appointing officer, and many times, a person trained by the Asian Pacific American — over the well-qualified Asian Pacific American.

As long as discrimination exists, affirmative action is necessary to create a truly diverse society. Numerous studies and statistics have proven that discrimination is still pervasive; the huge backlog of unresolved discrimination complaints at the Equal Employment Opportunity Commission provide further proof. Lawsuits by private attorneys remain beyond the financial means of most people. Until and unless discrimination complaints can be effectively addressed, affirmative action is not only a practical means to diversifying the workforce and other institutions, but establishes a cultural norm that encourages voluntary efforts at diversity.

Through effective affirmative action programs, we can promote the diversity which must be accepted as a natural part of the technicolor tapestry of our country. □

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Ron Wakabayashi —

Los Angeles County Human Relations Commission

Ron Wakabayashi is the Executive Director of the Los Angeles County Human Relations Commission. Mr. Wakabayashi is the former National Director of the Japanese American Citizens League and has been involved in Asian Pacific communities and organizations for over twenty years.

There are two main contending perspectives in the affirmative action discussion, one theoretical and the other pragmatic. One premise rests in the basic tenet that "all men are created equal." Implicit in this statement is the premise that equality includes the absence of unfair discrimination. Poll

The inclusive application of affirmative action beyond the African American population evolved with the struggle of other disenfranchised groups seeking inclusion. The disparity of educational access, employment and housing among women and identifiable groups resulted in the inclusion of these

If the goal is the achievement of equality, then eliminating present discrimination and advancing remedies for past discrimination is a logical marriage of approaches.

taxes, segregation, contract preferences and hiring quotas based on membership in a group violate this principle.

An alternative, and not mutually exclusive view, is that the existence of discrimination against individuals because of group membership requires redress or remedy in order to achieve equality. Each perspective identifies equality as a goal.

These perspectives are complementary in their relationship. If the goal is the achievement of equality, then eliminating present discrimination and advancing remedies for past discrimination is a logical marriage of approaches.

The ability to manage an effort with the goal of equality in a complex environment with enormous variation is exceedingly difficult. The mere fact that the effort toward equality spans many generations further complicates implementation. The scope of the effort, which includes a quarter billion current residents of this country, is characterized by unprecedented diversity and adds another level of complication and sensitivity.

The enactment of affirmative action legislation was extraordinary. It attempted to remedy an epic injustice: slavery. So large is the impact of the conditions of slavery that such extraordinary measures were adopted. At its core, affirmative action addresses an effort to repair a past wrong, a principle well established in our system of laws.

populations under the umbrella of affirmative action principles. The debate expanded from one arena to another, moving from schools to the workplace.

The results of the affirmative action strategy to bring about equality and inclusion remain mixed. There are increases in the degree of inclusion. At the same time, new barriers appear in the form of glass ceilings and walls.

The language in California Assembly Constitutional Amendment No. 2, and in the proposed California initiative circuitously proposes the elimination of affirmative action. The initiative's language cites a position opposed to all discrimination among groups of people. This language has a surface attractiveness, intentionally so, but is misleading. The target of the initiative is ending all programs which address remedies for differences that exist solely because discrimination exists.

American race relations has historically focused on barrier reduction strategies. It assumes that the elimination of discrimination has the consequence of constructing equity and inclusion. A look at our history invalidates this premise. Removing a barrier has a relationship to the achievement of a goal, but by itself has no intrinsic direction or movement toward a goal. Goals are achieved through planning and implementation, not by simply removing a barrier.

An approach to equity based solely on barrier removal is passive. Affirmative

action to design and implement activities intended to result in equity is active. Passivity presents a dangerous course. Our social environment is stressed by divisive interests with ethnic and racial implications. Not to address these stresses invites an expanded number of potential flashpoints that could have a devastating impact on the basic social contract which builds community. How we formulate public policy and design programs to access diversity as a positive resource and mitigate the potential for dissension will define how well our diversity serves us.

Affirmative action and all the associated programs contain complexities and sensitivities that may give rise to tensions among contending group interests. By its nature, controversies will develop with such a strategy. It is fair and reasonable to refine its application to minimize these tensions, but it serves none of the nation's long term interests to abandon the strategy because of its complexity.

The affirmative action discussion now underway should discuss our interests in policies of inclusion versus policies of passivity, and the likely consequences of each. Passivity has the attractiveness of simplicity. Affirmative action is complex and full of sensitivities. The scope, contentiousness and implications of the issue are such that a passive approach appears to be fatally flawed as a strategy to increase equality among all Americans.

To characterize efforts to eliminate affirmative action as a way to increase equality is disingenuous. Arguments to eliminate affirmative action lack roots in building equality. These arguments stem instead from anxieties raised by the changing social landscape transforming our business and government institutions. Changes in population diversity are readily visible while economic changes are more subtle. The danger is that this perspective will be applied to other social issues and will lead to a more deeply divided and hostile situation. Today's debate about affirmative action is only an initial encounter with the deeper crisis with social anxiety and an important reason why serious efforts to challenge today's nervous point of view must be made.

Promoting Diversity in Education

What are race preferences?

The Asian American Factor: Victim or Short-sighted Beneficiary of Race-Conscious Remedies?

Henry Der — Chinese for Affirmative Action

Henry Der is the Executive Director for Chinese for Affirmative Action, a San Francisco-based nonprofit organization created to protect the rights of Chinese Americans. Mr. Der is one of the most influential and effective civil rights leaders in the Bay Area. His commentary can be heard regularly on NPR radio.

As the national debate over affirmative action intensifies, Asian Americans have emerged as a critical factor in the arguments put forth by the opponents against this policy to promote equal opportunities for racial minorities and women. These opponents argue that Asian Americans do not need affirmative action and have actually been harmed by it. To bolster their claims, affirmative action opponents cite the use of differential admission scores by race to cap the number of Chinese American students admitted to San Francisco's highly-acclaimed Lowell High School and of "racial preferences" to admit African American and Hispanic freshman students to University of California's Berkeley and Los Angeles campuses, at the expense of academically-competitive Asian American applicants. Other opponents also emphasize that, as the number of post-civil rights era Asian immigrants increases, there is little justification to grant affirmative action benefits to individuals who have not resided long enough in America to have suffered historic discrimination.

Indeed, some Asian Americans have played an increasingly visible role to dismantle race-conscious remedies. In July, 1994, a group of Chinese American families, encouraged and supported primarily by the Chinese American Democratic Club through the Asian American Legal Foundation, filed a federal district court lawsuit, *Brian Ho v. San Francisco Unified School District*, to challenge the constitutionality of racial classifications to desegregate San Francisco public schools. These families have alleged that the use of racial classifications have denied Chinese students access to schools of their choice.

On July 20, 1995, University of California Regents Stephen Nakashima and David Lee voted with a majority of their colleagues to approve Regent Ward Connerly's resolutions to ban the use of race as a factor in admissions, employment and contracting decisions.

The UC Board of Regents invited the only Asian American California state legislator, Republican Assemblyman Nao Takasugi, former but not confirmed UC Regent Lester Lee, a representative of the Asian American Legal Foundation, Lee Cheng,¹ and Pacific Research Institute Senior Fellow Lance Izumi to testify before the Board.² All spoke in favor of the Connerly resolutions.³

Have Asians been hurt by race-based remedies benefiting other racial minority groups? Or, have Asians benefited from affirmative action, but oppose race-conscious remedies targeted toward other racial minority groups? Is there a split within the Asian American community about affirmative action and the use of race-conscious remedies in public policy decisionmaking? What are the political and social implications of such a split? To answer these and other questions about the Asian American factor in the affirmative action debate, there has to be an understanding of the legal and educational context in which race-conscious remedies are being implemented.

Affirmative Action and School Desegregation: Similar but not the Same

What is affirmative action? Affirmative action is a race and gender-conscious strategy to identify, recruit, and appoint qualified racial minorities and women for employment, higher education, and contracting opportunities. As President Bill Clinton outlined in his July 19, 1995 speech at the National Archives, affirmative action is not rigid quotas, reverse discrimination, preferences for unqualified individuals, or the continuation of programs that have met their goals. Affirmative action is a narrowly-tailored race-conscious remedy used on a temporary basis to overcome historic, persistent problems of discrimination, afflicting racial minorities and women.

Not all race-conscious strategies are affirmative action. The U.S. Supreme

"racial preferences?"

Court in *Brown v. Board of Education* outlawed "separate but equal" or racially-identifiable schools. Consequently, school desegregation is a race-conscious remedy to eradicate racially-identifiable schools — whether White, Black, Chinese, or any other racial group. School desegregation is not affirmative action, though. Affirmative action as a public policy does not and cannot exist at the K-12 educational level because all school-aged children are required by law to attend school; students do not, or should not have to, compete among themselves to determine who will receive an education. As such, public schools have a legal obligation to provide equal educational opportunities for all students.

Affirmative action opponents and members of the press have routinely characterized the *Brian Ho* lawsuit as a challenge against "affirmative action" because Chinese American students who gain admission to Lowell High School are required to achieve higher grades and test scores than students of other racial backgrounds, including other Asians.⁴ In their attempts to garner popular support for the lawsuit, supporters of the *Brian Ho* case have aggressively highlighted Lowell's admission policies, as if such policies are representative of how all Chinese American students are negatively affected by racially-based enrollment guidelines specified in the school desegregation Consent Decree.⁵

Lowell is one of 107 public schools in San Francisco. Lowell's admission policies are not typical of how other high schools admit their students. Lowell's admission policies must be understood and placed within the context of the entire Consent Decree and its effects on Chinese American students throughout all 107 public schools.

While Consent Decree enrollment guidelines specify that no racial group shall constitute more than 40% representation at any alternative school⁶ or 45% at any regular neighborhood school, the Consent Decree neither requires nor calls on alternative academic schools like Lowell to use grade and test score rank to select its students. The other alternative academic high schools in San Francisco — Wallenberg, Burton, Thurgood Marshall and International

Studies Academy (all of which are also highly sought-after) — use a lottery system within the racially-based enrollment guidelines to select their students to achieve school desegregation. In fact, such a lottery system for magnet school admission is commonly used across the country in court-ordered and voluntary desegregation plans.

Without a doubt, the use of racially-based, differential admission scores by

patterns strongly indicates that the racially-based Consent Decree enrollment guidelines have not barred Chinese access to schools of choice.⁸

When the June 1995 graduating class of the San Francisco Unified School District began high school in Fall 1991, there were 5,832 students enrolled as freshmen. Of these 5,832 students, 1,476 Chinese constituted 25% of the freshman class; 1,080 Blacks, 19%;

...school-aged children are required to attend school; students do not, or should not have to compete among themselves to determine who will receive an education.

Lowell places extraordinary pressure on Chinese applicants to achieve higher grades and test scores. For those Chinese students who score below the cut-off for Chinese, but score equally to the cutoff for other racial groups, feelings of unfairness, frustration, and resentment are understandable.⁷ Such pressure and resentment can and should be easily resolved. Admission by grade and test score rank is not the only legitimate form of a so-called "merit-based" school. If Lowell were to establish minimum qualifications or a uniform cut-off score for all racial groups and then admit students by lottery within Consent Decree enrollment guidelines, Lowell could maintain its status as a "merit-based" school and eradicate resentment caused by differential admission scores. There is a Lowell problem in terms of how its current "merit-based" admission by grade and test score rank is applied, but it is inappropriate to generalize the Lowell problem as a barrier facing Chinese students at the other 106 schools.

Brian Ho alleges that, until racial classifications and the enrollment guideline of 40% representation of any one racial group at an alternative school site are abolished, Chinese students will continue to be constitutionally harmed and denied access to schools of choice throughout the entire school district. Relative to other racial groups, have Chinese students suffered less access to schools of choice? Contrary to these *Brian Ho* allegations, a careful review of Chinese and other student enrollment

1,226 Hispanics, 23%; and 710 Whites, 12%.

Among this SFUSD Fall 1991 freshman class of 5,832, a total of 1,315 students were granted admission and later enrolled in the city's alternative academic high schools (including Lowell, Wallenberg, Burton, and International Studies Academy). Of these 1,315 students, 37% or 480 were Chinese. Only 9% or 118 were Black; 15% or 198 Hispanics; 13% or 171 Whites.

Relative to their overall representation in the freshman class and in comparison to all other racial groups, Chinese students were more likely to be granted choice and enrolled in one of the city's alternative academic high schools. In contrast, Black and Hispanic students were considerably less likely to be enrolled in a school of choice. White students had an even chance.

Black and Hispanic students were not the only groups who suffered diminished chances of gaining access to schools of choice. Limited English proficient, low-income and low-achieving students suffered equally worse access to schools of choice. Whereas limited English proficient students comprised 23% of all entering freshmen, only 4% of all freshman students granted choice were limited English proficient. 19% of all freshman students were classified as educationally disadvantaged, but only 5% of those enrolled in alternative high schools were educationally disadvantaged students (even though these students are probably in the greatest need

of challenging, alternative academic education).

Of the Chinese students who are denied admission to Lowell because their grades and test scores are below the Chinese cutoff but at least equal to that of other racial groups, these students seem to gain access to other alternative academic schools or other schools of choice. For example, among the three named *Brian Ho* plaintiffs, one is a high school student, Patrick Wong.⁹ When Patrick Wong submitted an application to attend a school other than his neighborhood high school, he requested four schools of choice: Lowell, Wallenberg, Lincoln, and Washington. He was denied admission to Lowell and Wallenberg, but gained admission to Lincoln. Given that he was granted one of his four choices, it is arguable whether the Consent Decree racially-based enrollment guidelines denied Patrick Wong access to a school of choice.

In any given year, over 75% of all Lowell applicants come from either a middle-class, west side or private middle school. Compared to low-income and/or immigrant students living on the east side of San Francisco, middle-class applicants and their families have many educational choices available to them. Consequently, applicants who are not admitted into Lowell, more often than not, have other choices, either in public schools or in the independent sector.

Do all Chinese students in San Francisco who request school choice gain access to schools of first choice? Clearly, the answer is no. On the other hand, students of other racial backgrounds also do not achieve access to schools of first choice in every instance. There is strong convincing evidence that, relative to other racial and other identifiable groups of students, Chinese students and their families appear to take strong advantage of school choices or appear to be overrepresented among those who are granted choice.

The federal court specifically designed the racially-based Consent Decree enrollment guidelines to prevent the resegregation of San Francisco public schools. As it stands, 70% of all Lowell students are Asians — Chinese, Japa-

nese, Filipinos, Koreans, Vietnamese, and other Asians. There is no more than a combined 30% representation of Whites, Blacks, Hispanics and Ameri-

fice of the President reaffirmed its longstanding policy of promoting diverse undergraduate student bodies on each campus. This policy calls on each

The controversy over which applicants get admitted to Berkeley is really a fight over the number of choices granted to high-achieving students among all racial groups, but has been characterized... as Asian applicants being denied access to a U.C. education.

can Indians at Lowell. The nine distinct racial classifications, provided for in the Consent Decree, have actually worked to the advantage of Asian students seeking access to Lowell, including ethnic Chinese from Southeast Asia who classify themselves as "other non-whites" and are not counted in the "Chinese" category.¹⁰ The true representation of Chinese students at Lowell is closer to fifty percent of the student body than the enrollment guideline of 40% for an alternative school. Nonetheless, the supporters of *Brian Ho* remain unsatisfied and demand more Chinese students admitted into Lowell, as if students of other racial backgrounds cannot or do not deserve to benefit from a college preparatory education at Lowell.

Merit and Racial Diversity in Higher Education

Just as racially-based enrollment guidelines must be understood in the context of school desegregation and its effect districtwide, admission to UC Berkeley and UCLA must be understood in the context of the California Master Plan for Higher Education and admission opportunities throughout the eight undergraduate UC campuses. The Master Plan calls on the University of California to select its undergraduate students from among the top 12.5 percent of graduating high school seniors. Contrary to popular belief, the Master Plan does not specify nor mandate each UC campus, including Berkeley, to admit students solely on grade and test score rank.

What the Master Plan and relevant state laws require is that UC serve students of diverse racial backgrounds who can benefit from a university education. To that end, seven years ago, the UC Of-

campus to admit 40% to 60% of its students on grade and test score rank and the remaining students on a combination of grades, test scores and other factors, including race and socio-economic status. UC does not measure academic excellence or the potential to benefit from a university education solely on high school grades and test scores. The Master Plan allows for UC to serve students with a range of academic abilities and achievements, ranging from a 3.3 to 4.0 GPA. Delegated the responsibility to establish admission criteria, the UC faculty has determined over time that GPAs lower than 3.3 could be offset by high test scores to determine eligibility.

Leading up to the UC Board of Regents' recent vote to dismantle race as a factor in admissions, Regent Connerly charged:¹¹

Many of those who support (UC's) current affirmative action practices labor under the very false impression that no innocent person is harmed, no one is admitted to the University who is not eligible, no one gets admitted because of their race or ethnic background, and the quality of the university is improved because of affirmative action... Asian and White students have a much higher standard to meet than African Americans, Hispanic and American Indians. Thus, innocent people are harmed, students are admitted solely on the basis of their race...

Connerly's allegation that Asians have been harmed by the university's affirmative action program strongly suggests that members of this racial group are being denied access to UC because "less qualified" Blacks and Hispanics are being admitted to UC. A review of university student enrollment indicates otherwise.

According to data by the UC Office of the President, for the Fall 1994 Semester, among all racial groups, Asian¹² and White applicants enjoyed the highest rates of admission as first-time UC freshman students. 85% of white applicants were admitted to UC; 84% of all Asian applicants were admitted. For Black and Hispanic applicants, the admission rate was 76% and 82% respectively. Stated in another way, Asian and White applicants have a slightly better chance of getting admitted into UC than either Blacks or Hispanics.

Between Fall 1991 and Fall 1994, the admission rate of Asian first-time freshman applicants increased from 79% to

84%; for White applicants, 77% to 85%. During this same period, the admission rate of Black and Hispanic applicants did not increase substantively.

Because UC admits every eligible Asian American applicant as well as eligible applicants of other racial backgrounds, in Fall 1994, more than 40,000 Asian Americans were enrolled as UC undergraduate students, constituting more than 35% of all UC undergraduate students. This 35% Asian representation is more than double the rate of Asian American students graduating from California's high schools. The astounding numbers and percentages of Asian UC students hardly support the claim that Asian Americans are being harmed and denied access to UC.

One recent preliminary UC study¹³ suggests that if there was no consideration for race and if low-income status was the only other consideration given in admission decisions besides grades and test scores, theoretically 15-25% more Asian applicants would be enrolled at a UC campus like Berkeley. Opponents of affirmative action and some Asian Americans have embraced this preliminary study, arguing that, rather than race, socioeconomic status should be a factor in university admission decisions. What is not clearly understood by these Asians and the California pub-

lic is the total number of Asians admitted into UC would not increase under the sole use of economic-based criteria. Certain UC campuses like Berkeley and UCLA would gain more Asian students, but other UC campuses would lose Asian American student enrollment from an overall shifting of Asian American students within the UC system.

Further, affirmative action opponents conveniently ignore the study's own caution that its findings are "speculative and subject to additional examination." This study excluded other factors, such as rural, special talents, athletics, disabled and re-entry women,

scores, but are nonetheless eligible under Master Plan criteria. On the other hand, affirmative action opponents like Regent Connerly have not hesitated in a misleading fashion to generalize the UC Berkeley admissions experience as the UC experience at all eight undergraduate campuses.

Application and enrollment decisions by Asians are as complex as those by other racial groups. Of the 2,465 Asian applicants admitted to the UC Berkeley Fall 1994 freshman class, only 1,158 or 47% decided to attend that campus. Or stated in another way, of those Asians admitted to Berkeley, more Asians decided not to attend Berkeley than to attend. The number of Asian admittees who decided not to enroll, 1,307, exceeds the total number of Blacks and Hispanics, 660, who enrolled as freshman students in Fall 1994. The fact that there are not more Asian American students at a UC campus like Berkeley is not the sole result of affirmative action for African American and Hispanic students.

The Master Plan has never guaranteed that every eligible UC applicant will be granted campus of first choice. UC freshman applicants routinely apply for admission to multiple campuses. They apply to campuses where they believe they will be admitted, but obviously not where they will eventually enroll. To achieve diversity, university officials at a high-demand campus like Berkeley have to balance a wide range of interests and needs, including the need to field its football team which is perennially and enthusiastically supported by Cal Chinese alumni. Notwithstanding the challenge of achieving diversity, UC admission policies do not appear to have discouraged nor negatively affected Asian American enrollment. University-wide, 68% of all Asians admitted to UC enrolled as freshman students at one of eight undergraduate campuses in Fall 1994, the highest enrollment rate among all racial groups. What evidence is there that, if Asian applicants do not get admitted to Berkeley, they are discouraged from enrolling at UC? The controversy over which applicants get admitted to Berkeley is really a fight over the number of choices granted to high-achieving students among all racial groups, but

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which are an integral part of UC's current admissions criteria. Once these factors and the newly-adopted, Board of Regent factor, "dysfunctionalism," are taken into consideration in admission decisions, it is highly unlikely that Asian American enrollment would significantly increase; in fact, it could decrease if "dysfunctionalism" affects non-Asian families at a higher rate than Asian families. If low-income status is used as the sole supplementary criterion, the UC study predicts that the average grade and test scores of UC Berkeley admittees would be lower than that of current admittees, whereby race is one among many factors in admissions decisions. Relative to their pleas to maintain "high academic standards," how willing would affirmative action opponents be to accept a lowering of the average grade and test scores of UC Berkeley admittees under a "sole use of low-income status" criterion scenario? In spite of their rhetoric, not likely.

There is no question that many Asian American families want their students to study at UC Berkeley. There is a very strong Asian American tradition there. Because of this desire and tradition, Asian applicants who are not admitted to UC Berkeley have complained about Blacks and Hispanics who, on average, are admitted with lower grades and test

has been characterized by affirmative action opponents as Asian applicants being denied access to a UC education.

Asian Americans at a Crossroad: A Segregated or Multiracial Democracy?

Affirmative action opponents, including the co-authors of the so-called "California Civil Rights Initiative," have strategically highlighted the admission practices at Lowell High School and UC Berkeley to drum up public opposition, including that of some Asian Americans, against race-conscious remedies. Ironically, if it qualifies for the state ballot and is approved by California voters, the "California Civil Rights Initiative" would have no legal authority or power to cause any change in the school desegregation Consent Decree in San Francisco, including the racially-based enrollment guidelines. In exploiting Asian vulnerability on the Lowell and UC Berkeley issues, affirmative action opponents have conveniently evaded the fact that Asian Americans, like other racial minorities and women, still need and can benefit from race-conscious affirmative action remedies in employment, public contracting, and even faculty hiring and graduate admission to certain academic fields in higher education.

Reports like the Federal Glass Ceiling Commission's *Good for Business: Making Full Use of the Nation's Human Capital* and Chinese for Affirmative Action's *The Broken Ladder: Asian Americans in City Government Reports*¹⁴ have documented that Asian Americans have not achieved equality in the workplace, in spite of their educational attainment and professional experience. Racist jokes about homogenized Asian Americans like LA Superior Court Judge Lance Ito and LA Criminalist Dennis Fung are not-too-funny reminders that racism and stereotypical treatment against Asian Americans run deep in American society today.

Uequivocally, Asian Americans have benefited from affirmative action in the mass media, construction, banking, law enforcement, telecommunications, utilities, and public sector employment. For example, based on Chinese for Affirmative Action's twenty-year effort to eradicate discriminatory practices in the San Francisco Police Department,

Asian Americans have gained employment and promotions because of race-conscious remedies. Two decades ago, there were fewer than five Asians on the San Francisco police force of 1,971 sworn personnel. Because of affirmative action, the representation of Asian Americans today stands at 290 sworn officers, a 5,800% increase and constituting the largest racial minority group in the SF police department. Similarly, because of CAA's efforts to integrate the SF Fire Department and court-approved affirmative action remedies, the representation of Asian firefighters jumped 373%, from 34 in 1985 to 161 in 1995.

The true challenge facing Asian Americans today is not whether more Chinese or Asians can be enrolled at Lowell or UC Berkeley, but whether we will play a responsible role in creating and maintaining a multiracial democracy. If not, Asian Americans face the real possibility of playing a leading role in a segregated society where Asian Americans will assume a role similar to the one held by Asian Indians in colonial

standing that affirmative action benefits and aids only those who are "unqualified." Some Asians reason that, because they are qualified, they do not need affirmative action. Quite the opposite is true. Precisely because Asians are qualified and affirmative action is in place, Asian Americans have realized new opportunities, without understanding fully that they have been affirmative action beneficiaries.

More troubling than the differences in opinion about affirmative action is the selfishness and hypocrisy of some Asian Americans who oppose affirmative action but, in fact, have benefited from race-conscious programs and strategies. These character flaws will accelerate the role played by Asian Americans in a resegregated America society. In such a society, Asian Americans become the "preferred minority," only to the extent that racial minorities fight each other without realizing true equality for any one racial minority group.

The current affirmative action debate

As affirmative action takes center stage in next year's presidential election, its proponents face the double challenge of stemming the resegregation of American society and of providing clear evidence that race-conscious remedies remain essential to the quest for equality.

East Africa when this racial minority group was perceived to be smarter and treated better than black Africans, but never as equals in the white-controlled colonial government. America will never be a colorblind society because of its history, institutional practices and individual experiences in a diverse society. To be race and color conscious is inevitable because racial diversity is America. Race-consciousness can and should be used positively to be inclusive, not to be exclusive as suggested by affirmative action opponents.

There are Asian Americans today who do not support affirmative action and race-conscious remedies. Differences in opinion within the Asian American community reflect differences in life experiences that Asians have had in this country. Such differences are rooted partly in the widespread misunder-

standing that affirmative action benefits and aids only those who are "unqualified." Some Asians reason that, because they are qualified, they do not need affirmative action. Quite the opposite is true. Precisely because Asians are qualified and affirmative action is in place, Asian Americans have realized new opportunities, without understanding fully that they have been affirmative action beneficiaries.

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The current affirmative action debate

has engaged some Asian Americans to the extent that their selfishness and hypocrisy are central to the dismantling of affirmative action. When the California State Senate rejected the confirmation of Regent Lester Lee, Governor Pete Wilson and his office specifically contacted key Chinese Americans to recommend "someone from your community" to fill the vacancy on the Board of Regents. David Lee's name surfaced among Chinese Americans contacted by the Governor. The Governor eventually appointed David Lee. When questioned whether race was a factor in the David Lee appointment, one Chinese American colleague of David Lee vehemently claims that race was not a factor, but that Lee's being a Silicon Valley businessman was. In his comments to support the Connerly resolutions, David Lee stated that he

"(does) not care about race." Even though he has personally benefited by race-consciousness, Lee's vote to dismantle affirmative action is not only hypocritical but selfish because many qualified Asian Americans will be denied employment and contracting opportunities at UC.

invoke their mantra of "individual rights," "hard-work", and "merit," these Asian Americans have come to believe that they are better than other racial minority groups and specifically view Blacks as unqualified, undeserving individuals who could not get ahead, were it not for affirmative action. Others believe that Blacks have

nation and to promote an array of race-conscious remedies. □

- 1 Based on a post-UC-Board-meeting discussion with the President of Asian American Legal Foundation, Roland Quan, Lee Cheng was not authorized to oppose affirmative action in employment, contracting or university admissions.
- 2 Former UC Regent Yori Wada and Henry Der, chairperson of the California Postsecondary Education Commission, spoke in opposition to the Connerly resolutions.
- 3 UC Regent Ward Connerly has stated that he is not opposed to affirmative action if this policy is used to identify and recruit qualified racial minorities for employment opportunities or to render early outreach services to minority youths for university admission. Under no circumstance does Connerly want race or gender to be a factor in any decision to hire an employee, admit a university student, or award a public contract. Therefore, his opposition to "race as a factor" effectively guts the central intent and purpose of affirmative action.
- 4 See, for example, "Minority Students Sue to End Affirmative Action Plan" in July 25, 1995 Wall Street Journal and "A Question of Fairness: Excellence and Equity at Lowell High" in June 19-21, 1995 San Francisco Chronicle.
- 5 SFNAACP v. SFUSD (C-78-1445-WHO)
- 6 Alternative schools (aka as "magnet school" in other school districts) do not serve students, based on their neighborhood residence. All students who attend an alternative school must submit an application for admission. Students attending regular schools are assigned there on the basis of neighborhood residence. There is no submission of an application, unless the student lives outside of the neighborhood attendance area.
- 7 Some White and other Asian applicants, whose cutoff scores are below that for Whites and other Asians, but higher than that for Black and Whites, have also complained about an unfair admission system.
- 8 Der, Henry. "Class Between Race-Conscious Remedies and Merit" in Asian American Policy Review, January, 1994.
Der, Henry. "Consent Decree: Observations about Student Enrollment Patterns - San Francisco Public Schools," unpublished paper, September 1994.
- 9 The other two named plaintiffs are elementary school students. One attends a parochial Catholic elementary school.
- 10 If the federal Office of Management and Budget guidelines on racial classification were to be used, only 4 racial groups - Black, White, American Indian and Asian Pacific Islander - and one ethnic group - Hispanic - would be recognized.
- 11 June 30, 1995 letter from Regent Ward Connerly to UC Board of Regents Chairman Clair Burgener.
- 12 The term "Asian" includes persons of Chinese, Japanese, Korean, Southeast Asian, Filipino, Asian Indian, Pakistani, Thai and other Asian ancestry.
- 13 "The use of socio-economic status in place of ethnicity in undergraduate admissions: a report on the results of an exploratory computer simulation." University of California Office of the President, Student Academic Services. Oakland, California, May 1995.
- 14 Henry Der, Colleen Lye, and Howard Ting. San Francisco, California: Chinese for Affirmative Action, 1986, 1989, 1992.

The federal court specifically designed the racially-based Consent Decree enrollment guidelines to prevent the resegregation of San Francisco public schools. As it stands, 70% of all Lowell students are Asians — Chinese, Japanese, Filipinos, Koreans, Vietnamese, and other Asians.

Then, there are Asian Americans who openly oppose race-conscious remedies and then turn right around to benefit from affirmative action. Prior to the adoption of the San Francisco Fire Department Consent Decree, a Chinese American firefighter submitted to the federal court a signed statement opposing adoption of the Consent Decree, alleging that "standards" would be lowered if race were a factor in hiring and promotions. Some years later, this Chinese American firefighter took a promotive exam and found himself not scoring very high on test. He approached Chinese for Affirmative Action and claimed that the oral portion of the test may have been discriminatory. As a party in the firefighter litigation, Chinese for Affirmative Action intervened and challenged the discriminatory aspect of the promotive test. Because of race conscious remedies provided for in the Consent Decree, this Chinese American firefighter eventually received a promotion over individuals who had higher test scores. No matter how many times some Asian Americans may complain about and oppose race-conscious remedies, Chinese for Affirmative Action has yet to witness any Asian American refuse a race-conscious or affirmative action opportunity.

Possibly worse than this hypocrisy and selfishness is growing intolerance among some Asian Americans toward other racial minorities, in particular Blacks. As affirmative action opponents

neither worked nor achieved enough to deserve an admission opportunity to a campus like UC Berkeley and should enroll in "lesser colleges." There is, at times, little empathy that Black Americans may have suffered discrimination, different in kind and by degree when compared to the Asian American experience.

As affirmative action takes center stage in next year's presidential election, proponents of affirmative action face the double challenge of stemming the resegregation of American society and of providing clear evidence that race-conscious remedies remain essential to the quest for equality by Asians. Affirmative action proponents initially reacted with pessimism to the U.S. Supreme Court decision in *Adarand v. Peña*, requiring federal affirmative action programs to adhere to the standard of "strict scrutiny," already imposed on state and local government-sponsored race-conscious programs. In spite of the worrisome trend of the Supreme Court's recent decisions on race-conscious remedies, affirmative action proponents will meet the challenge of *Adarand* and detail where race-conscious remedies remain necessary for Asian Americans and other racial minorities to achieve equality. By doing so, Asian Americans will demonstrate that a multiracial democracy remains viable, but requires a high degree of collaboration and work among racial minority groups to understand the many forms of race discrimi-

Affirming Affirmative Action

Chang-Lin Tien — University Of California, Berkeley

Dr. Chang-Lin Tien is the chancellor of the University of California at Berkeley and the nation's highest ranking Asian Pacific American in education. He is the first Asian Pacific to be appointed to head a major university in the U.S.

I never rode the city buses when I attended the University of Louisville in Kentucky. I had no car so sometimes I had to walk seemingly endless miles back and forth from the campus to downtown.

It was not simply the lack of money that forced me to walk, although I was a poor immigrant when I was accepted as a graduate student there in 1956. Rather, I refused to ride the buses because I found it humiliating.

Today, I can still recall my shock when I first boarded a city bus and found that whites rode in the front and "coloreds" rode in the rear. Just where exactly did an Asian fit in? I too have a skin color but I am not black. And if I chose the front section, what kind of statement was I making about the black men, women and children relegated to the rear?

This great country has made phenomenal progress since those days of Jim Crow segregation. The Civil Rights Act of 1964 paved the way for the desegregation of our society. Yet this country's leaders realized that de facto segregation would remain so long as blacks and other minorities were not afforded equal opportunities in hiring, contracting and admission to institutions of higher education. Their concerns led to the establishment of affirmative action policies.

These historic social changes did not come easily. The debates were heated. Pitched battles frequently erupted. Yet most would agree that our country is a better place as a consequence.

The Asian American community reaped substantial benefits from these efforts to integrate American society. Affirmative action opened doors previously closed to immigrants and natives alike, offering broader opportunities for housing and employment. It is now acceptable in America for an Asian to be CEO of a major corporation. Some Asians even have become chancellors of prominent universities. This would have been unthinkable in the America

1950s.

Now, the debate over affirmative action has surfaced once again. There are serious proposals to do away with these policies altogether. I do not agree with these proposals. I am particularly concerned about the impact these policies would have on institutions like the University of California, Berkeley. I

Today, I can still recall my shock when I first boarded a city bus and found that whites rode in the front and "coloreds" rode in the rear. Just where exactly did an Asian fit in?

worry that we may be turning back the clock, with harsh consequences for all minorities including Asian Americans.

I remain firmly convinced that diversity is the key to the continued academic excellence that is Berkeley's hallmark. I base this belief on the many successes my campus has recorded over the last decade, as it has grown increasingly diverse.

Furthermore, Berkeley is a public university that is charged with educating the diverse population of the state of California. In the 1990 census, ethnic minorities represented 43 percent of California's population. Any policy that does not enhance access for these minorities to our university is shunning our most basic charge.

Achieving this diversity while maintaining excellent academic standards is not a simple task. It requires an admissions process that takes into account traditional academic standards such as grade point average and SAT scores.

Yet the process must go further. It also must assess the relative potential of applicants as measured by that person's special talents, the hardships he or she had to overcome and the contributions he or she may make to society if afforded a quality education. It must take into account the obstacles to academic success posed by an applicant's race or ethnicity.

When we embarked on our journey to diversify our student body while preserving our excellence, there were no model admissions programs for us to follow. In many senses Berkeley has been charting new territory. And whenever you travel in unfamiliar terrain, you expect to stumble at times and strike off in the wrong direction at others. This has been our experience and we have learned along the way.

The Asian community is painfully familiar with some of our missteps. In the

1980s, a controversy brewed over the fairness of our freshmen admission standards. Some critics — including campus administrators such as myself — argued that proposed standards were weighted heavily against Asian Americans. The public outcry triggered investigations that ultimately resulted in a refining of our standards to insure fairness.

At the same time, we reformed the process of setting standards. As a result, the details of our freshmen admissions process is very much open to public scrutiny. Our admissions standards are a model copied across the country.

The new standards also define diversity more broadly. We want to make sure our doors are open to low-income students, immigrant students, older students, disabled students, and students from rural and urban regions alike.

Today Berkeley has one of the most diverse populations of any major American university. No racial or ethnic group is in the majority. In the fall of 1994 undergraduate student population, Asians represented 39.4 percent, whites 32.4 percent, Chicano/Latinos 13.8 percent, African Americans 5.5 percent, and American Indian/Native Americans 1.1 percent.

Critics of affirmative action say that opening the door to minorities does not guarantee their success and yet our graduation rates have improved as the

campus has become more diverse. Other critics predict that academic standards will decline as the numbers of minority students increase.

At Berkeley, that simply is not true. The fall 1994 freshman class is stronger academically from top to bottom than the freshman class of 10 years ago. Measured by almost any academic criteria one chooses, the excellence of our students is evident. The mean high school grade point average is 3.84, for example, and the mean SAT score is 1,225 — high by any standard. The overall academic quality of our student body has been improving consistently over the past 10 years.

And the pool of highly qualified students applying for admission continues to grow. For the fall 1995 semester, we received 22,700 freshmen applications — an increase of 9 percent over last year. These highly talented applicants included about 9,500 students with a 4.0 high school grade point average. The fact is our 1995 fall freshmen class will consist of 3,470 students.

Furthermore, our graduation rates have climbed steadily over the past 10 years for all students. Currently, 74 percent of our students graduate within five years. In the mid-1950s, just 48 percent of our students graduated within five years.

The numbers dispel the notion that diversity has somehow sacrificed the quality of our institution. In fact, the diversity has been coupled with rising standards.

I know there are Asian community leaders who argue that traditional academic criteria — grade point averages and SAT scores — should be the sole determinants for admission. I would point out that no major university admits students solely on this basis because such an approach ignores other factors that differentiate an excellent student from a good one. Elite private institutions routinely give special preferences to the children of alumni and of major donors. Yet no one argues that these practices have caused the academic quality of the Ivy League schools to decline.

The fact remains that diversifying our student body is sound educational policy in a country undergoing pro-

found demographic changes. Today's education student must be able to effectively teach in a multicultural classroom. The medical student who cannot comfortably interact with African American, Latino or Asian patients will fail to address modern society's medical needs. The business student who can't work in concert with colleagues from Hong Kong, Korea or Mexico will have a hard time climbing the corporate ladder.

Our country has come a long way since the days of segregated buses. But if we fail to provide access to higher education for all minorities, major sectors of our population will not succeed in a society that increasingly mandates advanced academic skills. I fear that the net result will be a two-tiered society, divided like those old buses along racial and ethnic lines.

The Asian community has always been united by a strong sense of justice. I am confident that we will come to the fore as the current debate on affirmative action unfolds.

As we face the challenges of the 21st century, we can draw inspiration from a poem carved on the wall of the Angel Island detention center. As the anonymous Chinese poet waited for clearance to enter America, he wrote: "Already a cool autumn has passed. Counting on my fingers, several months have elapsed. Still I am at the beginning of the road."

We, too, are at the beginning of the road — the road toward a society in which equal opportunity truly exists and in which universities prepare all of our nation's students to live and work harmoniously in the global village of the 21st century. I look forward to traveling down the road together with you.

(this article previously appeared in the June/July 1995 edition of A. Magazine)

Public Statement

re: Board of Regents for the University of California vote on July 20, 1995

To the UC Berkeley Community,

As most of you know, the Board of Regents on Thursday, July 20 voted to eliminate consideration of race, ethnicity and gender in hiring and contracting effective January 1, 1996 and in student admission decisions effective January 1, 1997. I am disappointed by their decision because I believe our policies have worked to offer opportunity to many and have succeeded in

strengthening our university for all. I am, however, not discouraged. Now, we must work together to develop new strategies to encourage continued diversity at Berkeley.

The heartfelt debate over affirmative action has been difficult, but we must not let it be divisive. I know that our students and faculty and staff hold many opinions and we must respect everyone's positions. I hold great hope that despite these divergent views, we can all work together for the good of the university. I am optimistic because while we may agree on how to encourage diversity, it remains clear there is widespread support for a UC that is inclusive rather than exclusive.

To all at Cal, but especially to our students, I want you to know that the Regents, President Peltason and all of my fellow chancellors share the belief that the University of California must be open and welcoming to all the people of California.

Our challenge is to accomplish this within the new guidelines. We will be working closely with the Office of the President, systemwide admissions officers and the UC faculty to work out the details of the new admissions policy.

In adopting the new admissions policy, the Regents showed great leadership in supporting enhanced outreach effort to increase the number of minority students eligible to enroll. Taking their lead, we will redouble these efforts at Berkeley, as will UC campuses systemwide. Further we will reach out to our community — to students, faculty, staff, and our neighbors — to develop creative, new strategies to assure continued diversity on our campus.

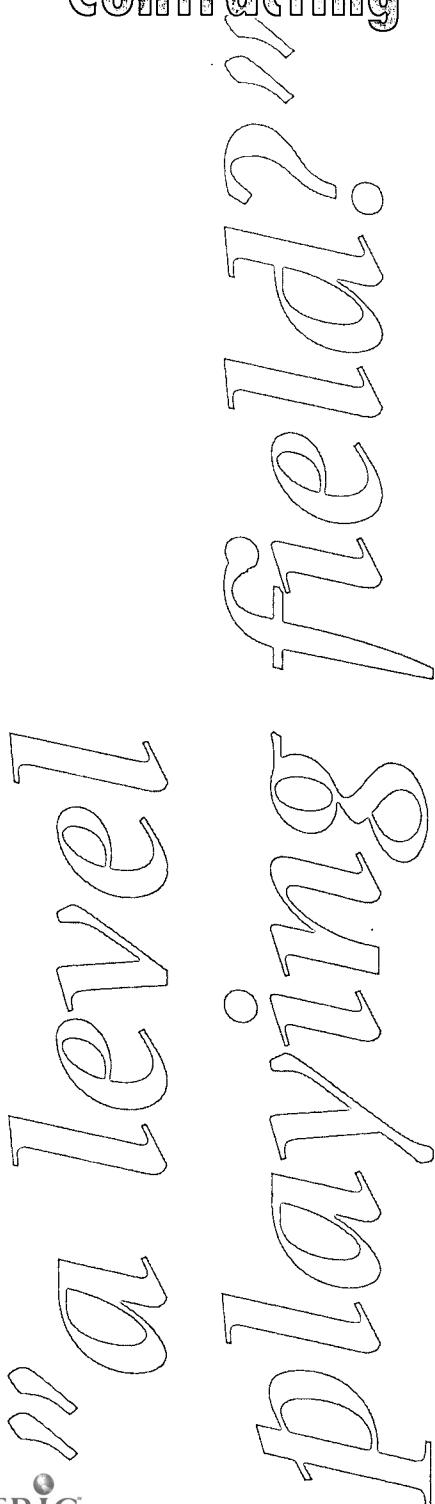
Even with our best efforts, however, it would be wrong to imply the Regents' admissions policy will not have an effect on the composition of our student body in the near future. We would anticipate some reduction in the number of underrepresented minorities. How much of a reduction is not clear. Projections to date have not taken into account specific implementation guidelines still to be developed.

As to hiring and contracting, affirmative action efforts are undertaken pursuant to federal rules and regulations. The Regents' actions would not impact those efforts, including open employment searches, in regard to faculty and staff employment.

Our mission continues to be to serve a student population that encompasses the cultural diversity of the state. I remain as convinced as ever that this is essential if we are to properly prepare California's future leaders. Every student who graduates from Berkeley today leaves our campus with a better understanding of our complex world that he or she would have had in years past. Diversity has and will continue to benefit not only individual students, but the campus and California as well.

I assure everyone on campus that I will join with my colleagues throughout the UC system to use every means available to continue the pursuit of excellence through diversity.

Eliminating Barriers in Employment and Contracting



Affirmative Action Under Attack

David R. Barclay — Hughes Electronics Corporation

David R. Barclay is the Vice President of Workforce Diversity at Hughes Electronics Corporation. A member of the LEAP Board of Directors since 1994, he is nationally recognized as an expert in workforce diversity and EEO issues.

For decades this country has been embroiled in controversy over the need for affirmative action programs. Now, forty years after the U.S. Supreme Court ruling in *Brown v. Board of Education*, which struck down the "separate but equal" doctrine in education, and thirty years after the passage of the Civil Rights Act of 1964 and the issuance of Executive Order 11246, we should be celebrating our progress, our successes. But instead, we find ourselves embroiled in the most significant and divisive debate this country has ever engaged in regarding affirmative action.

Now, we find ourselves questioning and re-examining these historic events to determine if they remain relevant today.

Does affirmative action remain a viable concept... have we moved beyond this program and has the new focus on diversity eliminated the need for goals and timetables? Are minority set-aside programs in public contracting still necessary? Does an integrated education environment provide the best opportunity for minority children to learn or does it only create an artificially integrated education setting that ends when class is over? Should integration be our national goal or should our goal simply be one of equality of opportunity... equal access?

These are not easy questions, but they are the issues this society must confront. We no longer have the luxury to discuss these problems in the abstract, like some theory, some philosophical rhetoric, like they're someone else's problem.

Has this society solved all of its race problems? Are we at a point in our history that we no longer need government oversight? Is the playing field now level? The answer to these questions is clearly "no."

Is it in our national interest to capitalize on the strengths of our growing diversity? Is it still our national goal to create opportunities for full participation in all facets of our society? I hope

the answer to these questions is "yes," but these questions must be answered before we move to the next step.

It is important to understand that the focus and doctrine that emerged from the civil rights movement in the fifties and sixties was designed to correct "historical inequities." This doctrine was founded upon the modification of social behavior... not the balancing of legal rights. This movement also viewed the employer as the cause and therefore the solution.

At that time, the debate was fueled by visual images brought into our living rooms every night by television... the images of injustices and racism in its purest form: dogs turned loose on peaceful demonstrators, sit-ins at lunch counters, burning of freedom buses, the murders of civil rights workers. The U.S. faced a moral issue that was compelling, one that we could not ignore.

Today, the visual images are not there and we have lost the moral imperative. But the vestiges of racism remain.

As a result of last November's election, we're seeing a mood of political conservatism sweep our country. Under the guise of balancing our budget, the new power brokers in Washington are turning the country away from the interest and needs of the poor, minorities, and even the middle class.

During the last three decades, we have had a multitude of court decisions that have changed and shaped affirmative action in economic development, education, and employment in a manner that gave hope to many of us in our continuing struggle to achieve our rightful place in this society.

But in June of 1995, the U.S. Supreme Court brought us back to the world of reality and made clear the magnitude of the struggle ahead for us. The court, in a span of several weeks has: (1) allowed a lower court decision stand that had declared a minority scholarship program unconstitutional; (2) suggested federal courts end their supervision of school desegregation plans; (3)

eliminated the contracting set-aside program for minorities, and perhaps the use of numerical goals for affirmative action planning, for all practical purposes; and (4) attacked the use of race in drawing congressional districts.

This same court overturned a consent decree in the Birmingham, Alabama, firefighters case in which: (1) blatant historical discrimination against Blacks was established; (2) the fire department

the legal system. At the same time, this same Republican leadership is calling for the elimination of the OFCCP and refusing to provide adequate funding for the EEOC to meet their increased workload. Hardly a commitment to the effective implementation of our civil rights law.

Even when cases go through the legal system and past discrimination is identified and remedies ordered by an ad-

President Lyndon Johnson, in a speech at Howard University in Washington, DC in June 1965, offered his rationale for affirmative action. He stated, "You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race, and then say, 'you are free to compete with all the others,' and still justly believe that you have been completely fair."

But now, the attack and debate has escalated to the national level. Virtually all of the Republican presidential candidates have lined up to oppose affirmative action and have stated that they would eliminate this program at the federal level if elected.

Earlier this year, President Clinton called for a review of all federal affirmative action programs. Initially, he straddled the fence trying to please everyone — but not pleasing anyone. But in July 1995, the President outlined broad criteria for the continuation of affirmative action and concluded that such policies are still necessary to combat continuing discrimination.

The business community has refused to join the debate. Many are willing to declare their support of "diversity," but few have come forward to support affirmative action.

Now I hear an increasing number of minorities and women stating they have been stigmatized by affirmative action ... they don't want to be associated with the program. Let me offer one viewpoint... we may very well have been stigmatized and stereotyped, but rest assured it was not because of affirmative action.

This attack has far-reaching implications. It is not limited to a simple disagreement over terminology... goals or quotas, preferential treatment, lower standards. It is not about affirmative action, case law or legal principles. It is not about the myths and misrepresentations.

This debate is about the anxieties of white males brought on by the changing demographics and a declining economy; decreasing job opportunities and more competition because of an expanded applicant pool for fewer jobs; the increasing representation of women

For those who say affirmative action hasn't worked, this is simply not true. It has opened many doors that had been previously closed tight.... At the same time, we know that more needs to be done.

refused to take affirmative actions to overcome this historical discrimination; and (3) because of this unreasonable delay, the court ordered a quota remedy. Now, twenty-one years after the original consent decree, this new Supreme Court has concluded that this remedy has unfairly discriminated against whites.

I must ask our opponents, "If not affirmative action, then what?" Elimination of this program is not a solution. Our opponents have not suggested any alternatives. One must wonder if they believe the playing field is now level and "fairness" will automatically become a reality. If they truly believe that assumption, then we have a bigger problem than I had ever imagined.

Some have suggested that the legal system is our salvation which can resolve the "few problems" that continue to exist. Hardly an answer. The Equal Employment Opportunity Commission (EEOC) struggles with their current backlog of nearly 100,000 complaints. The Office of Federal Contract-Compliance Programs (OFCCP) reviews annually only about 5% of all federal contractors. The courts are overwhelmed with an increasing number of discrimination lawsuits being filed throughout the country.

Republican leadership reaches an all-time high for hypocrisy when they call for the elimination of affirmative action and suggest individual acts of discrimination should be handled through

ministrative agency or the court, there appears to be no finality to the process. It is lengthy, convoluted, costly, and subject to the changing winds of political storms.

For those who say affirmative action hasn't worked, this is simply not true. It has opened many doors that had been previously closed tight. We have made progress and to deny this reality only undermines the program. But at the same time, we know that more needs to be done.

Even though there is no evidence or data whatsoever that supports the myths and misrepresentations of reverse discrimination, preferential treatment or lowered standards, our country is prepared to amend our Constitution, repeal executive orders, and totally eliminate a program that has opened many doors. I find it amazing that we are about to change national policy based on anecdotal stories.

We must shift from focusing only on symptoms and examine the underlying causes for the conditions that continue in our society. Our failure to deal with causes only undermines our ability to make rational decisions about our future.

It is clear that problems of this magnitude cannot and will not be solved by catchy phrases and simplistic dreams and visions. We must do more than just state, "I support equal opportunity." The problems are far too complex.

in the labor force; the emergence of a large and increasingly visible minority middle class; the persistence of racism and sexism; the dismantling of real preferential system that has existed for hundreds of years; it's about the sharing of economic wealth and power; and finally, it's about "racial politics" and the use of "wedge issues."

We must understand that this debate has not occurred by accident. It is part of a well thought-out strategy designed years ago to drive a wedge between white male voters in the Democratic party around the issues of abortion and affirmative action. We should not be surprised by the use of racial politics — this is not a new tactic. President Bush used Willie Horton to divide communities; Jesse Helms used a racist strategy to defeat Harvey Gantt in his last senatorial campaign.

This debate is about a nation that has been reluctant to change, reluctant to bring about true equality. It's about having the social and political will to change.

The opponents of affirmative action, supported by the media, have framed this debate to make it a black/white issue. But the fact is that this debate is not limited to the concerns of African-Americans. It encompasses problems affecting Asians, Hispanics, Native Americans, women, veterans and people with disabilities. All of these groups are covered by affirmative action obligations. The magnitude of this program cannot be diminished. We must not allow these opponents to divide us as they attempt to polarize ethnic groups and women against each other.

The current debate should, if nothing else, put an end to the optimistic vision that the passage of time would inevitably lead to the end of discrimination. Dr. Martin Luther King made the point succinctly when he said, "We must purge ourselves from the tranquilizing drug of gradualism."

If we are to overcome the historical patterns of prejudice and discrimination that still exist today, we must use every tool available to us... and that includes affirmative action. This is not the time to eliminate any program or

process, imperfect as some may believe they are, that have worked and produced results.

In our rush to implement the "Contract with America," we must think clearly about the consequences of the regulatory reform being offered up as the solution to our nation's problems. Let us think about the kind of society we will create if all of the tools used to ensure our national policy of equity and fairness are eliminated. Our history has been tragically clear in demonstrating that equity and fairness for minorities and women has never been provided through voluntary means. It has always been mandated by law, court decisions and administrative regulations.

The societal implications are far greater than anyone has addressed up to this point. It will be short-sighted for any community not to conduct a risk assessment of what can happen if we allow America's ethnic communities, the fastest growing segment of our popu-

lation, to be further disenfranchised and alienated from the mainstream... left with a feeling of hopelessness, frustration and despair. This will only lead to greater societal problems.

As long as we face discrimination based on race and gender, then we must fashion remedies that take these factors into account. Race and gender conscious remedies have proven essential in measuring our success or failure in overcoming discrimination and they remain essential in today's environment.

Rather than the divisive rhetoric, we should come together to confront the realities of racism and eliminate the barriers to equal access and opportunity. Let's have an honest inquiry and sober reflection into the state of race relations in our country. Let's create a society that establishes and affirms a common vision and set of values that ensures fairness, equality and social justice. Let's support the continued need for affirmative action. ■

The Persistence of Inequality

Paul M. Igasaki — Equal Employment Opportunity Commission

Paul M. Igasaki is Vice Chairman of the U.S. Equal Employment Opportunity Commission in Washington, D.C. Commissioner Igasaki's professional career spans years of involvement in civil rights. A lawyer by training, he is one of the highest Asian Pacific appointees in the Clinton Administration.

As Vice Chairman of the agency that enforces America's employment discrimination laws, my day-to-day work is not essentially about affirmative action, except to the extent that enforcement of anti-discrimination laws was

no longer a serious problem; that we have reached the ideal of a level playing field. At the EEOC, it is clear this is incorrect. Employment discrimination is happening now at as high or higher levels than at any time in history. Ra-

*...the same laws that protect women and minorities
protect white men.*

intended to overcome the effects of discrimination.¹ That, after all, is the definition of affirmative action. It does not necessarily mean quotas, or even preferences based on race or gender. Even the harshest opponents of affirmative action agree that vigorous enforcement of anti-discrimination laws is essential. While the EEOC reviews federal agency affirmative action programs, that is a relatively small portion of the organization's mission.

In the current debate, many appear to assume employment discrimination is

cial and other tensions in the workplace have gone through the roof. Racial coding and "losing" minority applications, sexual harassment in the form of sexual assault or extortion, physical attacks against "foreign-looking" workers are but a few of the cases that come to the EEOC at a rate of nearly 100,000 per year.

It is also falsely assumed by many that no ways exist for aggrieved white males to challenge gender or race discrimination against them. In fact, the same laws that protect women and minori-

ties protect white men. Similar laws cover age and disability discrimination. There really is no "reverse" discrimination; all discrimination is prohibited by current law. Less than two percent of charges filed with the EEOC appear to be in this latter category and, as with other cases, many lack merit. If an employer discriminates, including alleged use of illegal quotas in hiring, that case will be handled aggressively by the EEOC. Reverse discrimination simply does not happen as often as the affirmative action bashers would have us believe.

As an Asian American presidential appointee and as Vice Chairman of the EEOC, I am also troubled by the misinformation and manipulation of the Asian Pacific American community and its interests. I sat in on a recent Congressional hearing on the subject and heard testifiers on both sides refer several times to the Asian Pacific American community and affirmative action's effect on it. Yet no one allowed an Asian to testify and none of the Asian American members of Congress were on the committee. While it is convenient to use us in the debate, we have trouble getting our voices heard.

Before indicating Asian American interests in affirmative action, it is necessary to define the term. For one thing, it is not about quotas. Statistical "straightjackets" that require the hiring of women or minorities at specific levels are illegal in education and in employment. While federal courts have occasionally ordered quotas when egregious discrimination does not respond to lesser measures, federal law generally prohibits them. No one proposes changing this policy.

Affirmative action applies to any program designed to overcome the effects of past or present discrimination to provide for a fairer representation of underrepresented groups. It should never require the hiring of persons unqualified to do a particular job or attend a specific institution. It can mean considering diversity, along with other factors, in making job or other decisions. It can mean targeting recruitment efforts to increase applicants from groups not being reached by current efforts. It can mean reassessing tests or requirements that may have a discrimi-

natory effect. In all cases, concerns about preferential treatment must be examined in detail on a case-by-case, context-by-context basis.

Some opponents of affirmative action argue that any consideration of numbers or statistics constitutes a quota, even though the Civil Rights Act of 1991 provides for the use of statistics and labor force availability to determine when further inquiry is necessary to identify discriminatory situations. For the enforcement of anti-discrimination law, statistical analysis is both

all levels of government. Asian Americans clearly suffer from glass ceiling discrimination at a time when minorities and women make up some 60% of the nation's working population. Even when they do reach some level of success, minorities and women generally make less money, sometimes substantially less than those in similar jobs with the same level of education and experience.

Data reveal that few Asians advance from professional to management positions, even in firms with extremely

...we should not allow short-run political gain to harm programs integral to the enforcement of the promises of the original contract with the American people: the Constitution and the Bill of Rights.

crucial and expected, but it is also needed to determine whether the glass ceiling or more overt discrimination is actually taking place.

Others oppose "goals and timetables" but favor targeted recruitment, but fail to consider how it should be determined for which jobs special outreach is necessary. When I worked for the City of Chicago, we were able to overcome dramatic exclusion of Asian Americans through targeted recruitment. Despite a growing Asian American population, substantially less than one percent of new hires were Asian before this program, but grew to over four percent as a result of special outreach. The setting of goals was necessary to determine which city departments needed this assistance and for which job categories. As long as goals and timetables are flexible, they are essential to fighting discrimination, but are not quotas. Few oppose this form of affirmative action.

The results of the Glass Ceiling Commission's studies document the importance of affirmative action to Asian Americans. Authorized by legislation sponsored by Senator Robert Dole and originally led by Labor Secretary Elizabeth Dole, the Commission found that whites occupy 97% of the senior management positions in our largest corporations and men occupy from 95 to 97% of such management positions. Similar percentages apply at

high numbers of Asian workers. Affirmative action has been found by many to be good business as a 1993 Standard and Poors study showed, but present practices continue. A number of highly successful Asian American-owned small high technology firms have developed from professionals rebuffed by large high tech companies. While these small companies are impressive, the loss of quality managers in large firms damages our nation's economic competitiveness as well as the prospect of ever overcoming the glass ceiling.

Asian Pacific Americans have more conflicted feelings in the education arena. Although Asian Americans were once widely excluded from most prestigious universities, they do not, for the most part, need affirmative action consideration in most educational admissions. This does not mean, however, that the ladder should be pulled up behind us. To have the tools necessary to break through the glass ceiling in other areas, we must support the efforts of other groups still finding difficulty getting into educational institutions. If Asian Americans dominate a public educational institution, political support will deflate and that institution will not be adequately supported.

I support President Clinton's review of federal affirmative action programs to assess their effectiveness and to correct any negative, unintended results. The

EEOC is heavily involved in this review. Some programs may not all be accomplishing what they were intended to do and have not been reviewed for many years. We should be open both to more strategic programs as well as changes that eliminate discriminatory impact that may exist. Affirmative action remains an important tool in advancing the elusive goal of civil rights. However, we should not allow short-run political gain to harm programs integral to the enforcement of the promises of the original contract with the American people: the Constitution and the Bill of Rights.

Lack of job security in a changing economy allows those that would blame women and minorities fertile ground for frustration. All Americans have suffered from these realities, but women and minorities most of all. It becomes easy to accept this scapegoating when you feel the pain, yet most Americans continue to support affirmative efforts to overcome discrimination.

While acknowledging the frustrations of those who feel this pain, we must not fall into the trap of tearing apart our social fabric or losing the progress of thirty years of civil rights gains. The only consistent conclusion from recent polls is that there is wide misunderstanding of what affirmative action actually is. By providing for resolution and enforcement of the rights of those

who are hurt by discrimination, women or men, whites or minorities, we advance the cause of justice and equality. By caving in to a juggernaut of anti-affirmative action scapegoating, we make things worse.² ■

1 My remarks are my own and do not necessarily represent the views of the Clinton Administration, which is currently reviewing its affirmative action programs, nor of the Equal Employment Opportunity Commission, which is an independent, bipartisan enforcement agency. Nevertheless, I feel the need to address the affirmative action issue for a variety of reasons.

2 The Supreme Court's ruling in the *Adarand Contractors v. Peña* case is clearly a setback for affirmative action. It demonstrates how critical one vote on the Supreme Court can be. The effect of this decision will depend upon how the lower courts interpret it, subsequent Supreme Court decisions on the subject, and how the President, Congress and, ultimately, the American public, react to it. I believe that, if properly informed (and that is a big "if"), the public will support programs to overcome the effects of discrimination in the workplace. A majority of Justices continue to support the use of "narrowly tailored" race-based programs to further a "compelling state interest." Time will tell how this standard will be applied.

While the standard applied to such programs in this case is much higher than previously applied, it is not insurmountable. More justification will be needed to support affirmative action programs generally. It is possible that employment, federal contracting and education will be differently affected. At the EEOC, it is clear that a high level of discrimination continues to occur in the federal government and in private employment that can, in addition to the established histories of such discrimination, be used to justify remedial programs. Many states and localities have maintained aggressive affirmative action programs despite the higher standard imposed by the *Richmond v. Croson* decision. These programs have withstood legal challenges. We should also remember that the proposed California initiative goes much farther than this decision does, with potentially many more unintended consequences.

Linda Wong — Rebuild LA

Linda Wong is General Counsel and Chief Financial Officer of Rebuild LA, formed in response to the 1992 Los Angeles civil uprising. Ms. Wong, an immigration and civil rights expert, is a former director of California Tomorrow. She serves on various national panels and advisory boards of government and public policy groups.

The focus of the debate over affirmative action is misplaced in many respects. The issue is not whether we should adopt a so-called "merit-based" selection system, or even whether we should strive for a colorblind society. The real question is whether affirmative action is effectively promoting access and change for institutional as well as individual beneficiaries of the policy.

If we recognize the importance of the social juncture where we presently find ourselves, we will understand why this focus is more appropriate in the long-

term. Though many would prefer to ignore it, we are in fact in the midst of a societal shift so massive that the rules of engagement are being rewritten to create a new social and economic order. The impetus for the creation of a

new system has more to do with global competition and technological advances than with a rising tide of conservatism. And the momentum is so great that no organization or institution is immune from the need to transform itself in a fundamental way. It is in this context that affirmative action takes on a duality of character which highlights its promise, but also underscores its inherent limitations.

On the one hand, affirmative action opens the door to change because it brings into the workplace, the school, or a neighborhood people who, by their very difference, help open a previously closed system, making it more dynamic and adaptable to the surrounding environment.

Look at any company preparing itself for stepped-up competition. Pacific Bell, for example, demonstrates the value of affirmative action by using it to expand its domestic market. Over the past six years, it has developed a niche in the ethnic marketplace, which has proven to be one of the most lucrative for the company. The establishment of service centers tailored to the needs of customers speaking Spanish and the major Asian languages have reaped tremendous financial rewards for Pacific Bell. Between 1990 and 1994, its customer base grew by 129 percent, far exceeding the company's original projections. If the Ethnic Markets Group were an independent company, it would rank as one of the twenty largest Hispanic-owned businesses in the country. But Pacific Bell would not have been so successful if it had not brought in the managers and employees who reflected the very markets it was trying to reach.

Aside from Pacific Bell, there is a growing list of corporate examples illustrating this important lesson. From AT&T, which is waging an aggressive marketing campaign targeting bilingual, bicultural Asian customers, to Wells Fargo,

Though many would prefer to ignore it, we are in fact in the midst of a societal shift so massive that the rules of engagement are being rewritten to create a new social and economic order.

which expanded its private banking services to Latin America, companies are waking up to the realization that a large portion of their new business comes from these multiethnic, multilingual consumers.

But firms which have implemented these outreach strategies know full well that it is not enough to bring together a diverse group of people to increase their market share. Any manager who has formed a team of technicians and marketing people, as well as women and minorities, realizes that their job has only just begun. Team members still have to learn to work with one another, reconciling different styles of communication, conflict resolution and lead-

assume the mainstream behaviors for success, that person was not likely to survive. Couple this with the situation that many women and minorities still face in business organizations — their small numbers and relative isolation — and the chances for failure are even greater. If they are placed in token positions, they are marginalized. If they are the first to move up the ranks, or one of a handful in management positions, every mistake they make is magnified. And a misstep may be interpreted as incompetency.

Avon's management realized that the "assimilationist" model of behavior was deadly, not only for the employee but for the company as well. In a period of

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ership, in order to leverage their skills and talents. It is in this setting that we uncover one of the shortcomings of traditional affirmative action.

Avon Products, the cosmetics manufacturer, was one of many companies which mounted major recruitment drives in the 1980s to attract women and minorities into its employee ranks. It did so partly in recognition of the fact that the company could better respond to a marketplace that was becoming increasingly diverse and segmented. The outreach strategy worked. But the women and minorities who were hired did not stay. In fact, many ultimately left the company. After several attempts to address the problem, Avon's management finally realized what it was doing wrong. The affirmative action programs which had been implemented opened the doors for women and minorities, but they did nothing to change the organization itself once the new employees came in to work.

What happened was typical for many new hires. The burden was on the individual employee, not the organization, to change. If the employee could not adapt to the corporate culture and

volatile change and increasing competition, assimilationism stifles innovation and risk-taking, the very qualities a company needs to remain competitive. Employees focus instead on fitting in with the dominant culture, instead of thinking and acting "outside the box." Armed with the understanding that change had to be a two-way street, Avon launched a five-year plan to overhaul the company's corporate culture, core values and behavioral norms. In place of the old model would be an "acculturationist" paradigm, one in which the organization would adapt to the talents and needs of the employees.

In taking this course of action, Avon had clearly defined goals and measurable outcomes related to productivity and market share. However, the company also realized that the commitment to change had to be long-term and the strategies comprehensive.

These lessons are not lost on other institutions. Public schools, for example, acknowledge the need to change in order to better serve students who are themselves diverse. In fact, school reform initiatives increasingly understand the cultural dimensions of

change: how the social organization of the school and deeply rooted institutional values and norms influence achievement, rewarding some forms of learning behavior while penalizing others, recognizing some kinds of intelligence (such as verbal communication and abstract reasoning) but ignoring others.

Understanding these issues is important in ensuring the lasting effects of reform, because it means that change has to be comprehensive, not piece-meal or program driven. Change of this systemic nature therefore encompasses reform of both the structure and the culture of an organization. In the school context, the first level of change must include curriculum and instruction; the organizational hierarchy of decision-making, student services, community and parental involvement, teacher training; student assessment, and accountability for results. The second level of change addresses the roots of the organization — the basic assumptions and belief systems which give it life and influence behavior.

In this context, affirmative action cannot succeed if it is viewed strictly as a stand-alone policy. Operationally, it facilitates the first level of change, providing access for those who have been excluded as a result of discrimination. But affirmative action does not have the capacity to initiate the second level of change in the culture of an organization. It cannot alter the relationships between people or reshape the values and norms which are deeply embedded. Indeed, if affirmative action is to succeed over the long-term, it must be incorporated into a broader restructuring strategy that focuses on core values, belief systems and work processes.

Should affirmative action be eliminated tomorrow by its opponents, the changes occurring today will not stop. But they would certainly be slowed down. Such a loss of initiative would put all of us at great risk, because it further handicaps our ability to respond to external conditions which are increasingly fluid and volatile. If the detractors do not understand this, the price we pay for political expediency will be far greater than we ever imagined.

Public Contracting Opportunities for Minority & Woman Entrepreneurs

Edwin M. Lee — San Francisco Human Rights Commission

Edwin M. Lee is the Director of the San Francisco Human Rights Commission of the City and County of San Francisco. Prior to his 1991 appointment, Mr. Lee helped make history at the Asian Law Caucus through leadership on major civil rights issues, including his successful defense of San Francisco's Minority/Women/Locally owned Business Enterprise law in federal court.

The Debate

In major cities across our country, public programs have been established to provide business opportunities for woman-owned (WBE) and minority-owned (MBE) enterprises. These programs are tailored to correct the effects of past discrimination in the awards of public contracts. After years of exclusion, MBEs and WBEs are just beginning to be introduced into the marketplace as public competitors.

In the growing debate over affirmative action, proponents of the "California Civil Rights Initiative" (CCRI) have attacked these programs as unfair, quota-driven and racial- or gender-stigmatizing. These attacks are far from the truth and serve only to misinform the public. The objectives of these programs are to re-establish fairness, eliminate discriminatory barriers, build business capacity and create new business relationships. These objectives are affirmative and critical to serving the public interest.

Re-Establishing Fairness

Any examination of public contracting, be it federal, state or municipal levels, confirms the existence of business and social networks that share information among their members, establish business relationships, provide professional and financial advice, support and access to government entities.

In San Francisco, members of such networks have historically benefited from each other's experiences in the public awards process. Such experiences have been critical to a contractor's ability to bid in compliance with City rules and regulations, to negotiate a contract, to perform effectively and to get paid in a timely manner.

Most of these networks operate in a buddy system (the "old boys' network") and are made up of primarily white and male members. They protect the successful experiences of their members and reinforce their social relationships

to remain exclusive. In industries

such as construction, these relationships in the private sector spill over to the public works sector, thereby continuing the exclusion of women and minority entrepreneurs. Such networks dominated the public works and general contracting sectors for decades. Only in recent years (1984, in the case of San Francisco) have public entities developed affirmative action programs to bring about an even-level playing field by re-introducing WBEs and MBEs into the public sector and into these networks.

The mere introduction of WBEs and MBEs into the public domain does not, however, produce fairness. After decades of exclusion, most of these businesses are seriously under-capitalized and find it difficult to withstand the complexities of government contract-

grained practices. It merely wishes them away by focusing on a "coin toss" approach to fairness and, by doing so, dismisses local attempts to promote fairness.

Eliminating Discriminatory Barriers

A major objective of MBE/WBE programs is to eliminate discriminatory barriers, but such barriers are not easily recognizable in our existing contracting systems. In a City such as San Francisco which awards over 20,000 contracts every year (not including sub-contracts), our Program is dependent upon those who administer the system to help us correct it. As government downsizes, personnel are changed without respect for their knowledge or experiences. A personnel change may often produce the effect of going back to similar, old practices or just plain ignorance. The result is lost time and opportunities for inclusion of MBEs and WBEs.

More common are barriers that also exist in the private sector, in such areas as construction sub-contracting. In San Francisco's program, we have had

Even the most dedicated MBE/WBE program will take years to eliminate local barriers and discriminatory practices.

ing. The most effective MBE/WBE programs contain a variety of incentives and conditions that reflect the complexity of public contracting in its locale. Some emphasize voluntary efforts while others set contract goals, bid preferences, set-aside contracts and targeted outreach. These affirmative action tools can only be utilized after the local government has established a record of discrimination that justifies use of these tools.

Even the most dedicated MBE/WBE program will take years to eliminate local barriers and discriminatory practices. Most public contract administrators attempt to repeat what has worked before; hence, there is resistance to accepting new, often unknown players into a contracting system driven by limited time frames, budget restrictions, competition and the need for financial capacity. The proposed CCRI provides absolutely no recognition of the lingering impact of discrimination and in-

to require sub-contract goals for the inclusion of available MBEs and WBEs. Nowhere is the presence of exclusive networks more dramatic than in this particular industry where private relationships dominate. When goals are not set or enforced vigorously, inclusion is often minimal or non-existent.

This particular combination of old government habits and continued private practices serve to extend discriminatory barriers in public contracting. While sub-contracting goals for women and minorities have produced great gains in recent years, our experience is that much more time is required in order for M/WBEs to gain a solid foothold in a competitive business environment.

Build Business Capacity

A third objective of MBE/WBE programs is to build the business capacity of its beneficiaries, not just its size. There must be an ability to sustain and complete public projects amidst gov-

"a level playing field?"

ernment bureaucracy, project delays, payment delays, rising costs and unanticipated circumstances. Any of these conditions can quickly destroy a developing minority-owned or woman-owned enterprise.

Only now are we beginning to see a trickle of businesses "graduate" from years of capacity building, just as their non-minority counterparts have done after decades of networking. Their capacities reflect adequate levels of insurance, bonding, credit with equipment suppliers, bankers, a consistent, available and competent workforce and, of course, public experience. These attributes take years to obtain. For example, while members of old networks use their capacity to submit numerous bids while performing already awarded contracts, MBEs and WBEs often are obliged to go from one contract to another. The CCRI simply ignores these complexities of public contracting and reflects an inherent ignorance of how businesses develop.

Creating New Business Relationships

Arguably the most important objective of MBE/WBE programs is the creation of new business relationships between non-minority enterprises and MBEs and WBEs. Affirmative action in business has been a remarkable instigator of these new relations. This is why affirmative action does not seek to destroy the "old boys' network" but to dramatically expand its ranks. By creating incentives in the public sector to utilize MBEs and WBEs, local governments have provided an environment where majority firms have sought out business relationships with other firms, rather than limit themselves to "network" players. This activity has produced more competition in the public sector and therefore increased competitive pricing.

In San Francisco, our experience shows new relationships at both the prime contracting and sub-contracting levels. We observe the creation of joint ventures and joint professional associations between majority and minority/woman firms. We are certain that such relations would not be created without government incentives backed by a commitment to include historically excluded groups. Race cannot be ignored by virtue of the large role it con-

tinues to play in the make-up of the present pool of public contractors. That particular make-up will not, in our experience, change by itself because of the exclusive nature of existing social relationships upon which government has far less impact.

As already noted, business relationships reflect the social relationships within our communities. Private social clubs (e.g. country clubs) spawn such business connections, as noted by Justice

Stevens' dissent in a recent Supreme Court case (*Adarand v. Peña* USSC No. 93-1841, 1995 W.L. 347345 * 32). If we are to serve the public interest effectively, it is imperative that MBE/WBE programs be embraced, nurtured and sustained in order to re-include members that have been historically excluded. This is no the time to abandon our commitment to a more just society. We know too much to blind ourselves to simplistic slogans uttered more out of frustration than sincerity. ■

Stewart Kwoh, Kathryn K. Imahara and Elsie V. Hui — Asian Pacific American Legal Center Of Southern California

Stewart Kwoh is the President and Executive Director of the Asian Pacific American Legal Center of Southern California, an organization founded by Kwoh to provide legal services to needy Asian Pacifics. Mr. Kwoh, a member of the LEAP Board of Directors since 1989, is a prominent community leader in Los Angeles.

Kathryn K. Imahara is a Civil Rights Staff Attorney at the Asian Pacific American Legal Center of Southern California. Ms. Imahara is the author of "Language Rights Policy," an article previously published in The State of Asian Pacific America: Policy Issues to the Year 2020.

Elsie V. Hui is a Project Coordinator at the Asian Pacific American Legal Center.

For at least 50 years, the Los Angeles Police Department (LAPD) was overwhelmingly comprised of white men. In 1980, this practice was changed via a court order which required the LAPD to hire more women, African Americans, and Latinos to better serve the city. Goals and timetables were eventually established because "good faith efforts" to hire from underrepresented groups were not evident. For reasons unknown, Asian Pacific Americans (APAs) were not part of the consent

solely on the consent decree. In addition to bias reduction training at the academy and staff level, the LAPD has launched an Asian Pacific American recruitment effort after years of educating and pressuring the LAPD, Chief of Police, Mayor, City Council and Police Commission by the Asian Pacific American Legal Center and concerned individuals from APA community-based organizations. In addition, Law Enforcement Association of Asian Pacifics (LEAAP) assists applicants

Affirmative action was never considered the only solution to resolve the years of hatred, intolerance, and discrimination.

decree. This exclusion of APAs from the consent decree has led to continued low hiring and promotion rates of APA officers and limited services to the APA community,¹ although after 15 years, representation of more African Americans, Latinos, and women within the LAPD has increased. Because vestiges of past discrimination have not been eliminated,² the LAPD continues to abide by the consent decree which has benefited all Los Angeles residents.

In their attempt to eliminate bias from the police force, the LAPD does not rely

through the oral interview and other exams, a voluntary affirmative action strategy aimed at increasing the number of APA applicants and cultivating good officers.

These voluntary affirmative action programs would be prohibited by the proposed California Civil Rights Initiative (the CCRI would abolish such programs in public employment, public education, and public contracting). While APAs should have been included in the original consent decree in 1980, these recruitment and mentoring efforts re-

main vital tools to increase APA numbers. As a remedy with a broad range of options, affirmative action allows these types of remedies to work. Without them, the APA community would continue to be poorly served.

Affirmative action cannot eliminate racism; however, it never was meant to do so. Until the mid-1960s, it was legal to: "steer" people away from affluent, white neighborhoods into homes surrounded by other people of color; deny admission to college because of the

major role, as the growing paucity of well-paying jobs and acceptances to top colleges has created insecurity within whites and others. Affirmative action programs, viewed as the source of preferential treatment and quotas, have become the scapegoat, whereas the cause of today's anxieties lie in unsound economic policies and economic restructuring.

Affirmative action is about offering equal opportunity to individuals from historically excluded groups. It is about

Though we are lauded as the "model minority," Asian Pacific Americans continue to feel the effects of past and present discrimination.

color of someone's skin; and refuse to serve a person of color. These acts of discrimination were not performed against African Americans alone. Asian Pacific Americans (e.g. Filipinos, Japanese, Chinese, and Koreans in California) were also subject to cruel and inequitable treatment. Though we are lauded as the "model minority," Asian Pacific Americans continue to feel the effects of past and present discrimination.³

A number of laws were passed to remedy blatant forms of discrimination as the nation's economy expanded in the 1960s. Education, health, and literacy programs headed the national agenda. The Voting Rights Act was passed to ensure that discriminatory and intimidating voting practices (like assigning poll taxes and stationing armed guards at polling sites) were eliminated. Title VII was enacted to ensure fair and equal treatment in employment. Fair Housing laws were implemented to eliminate "steering" and discourage the creation of ghettos. The Education code was updated to reflect the Supreme Court's decision in *Brown v. Board of Education*. At the same time, affirmative action was designed to be one other means through which a history of exclusion could be potentially remedied. Affirmative action was never considered the only solution to resolve the years of hatred, intolerance, and discrimination.

creating a level playing field so that qualified individuals can have an opportunities they would have been denied if diversity programs were not implemented. Nevertheless, rare cases of affirmative action programs that resulted in reverse discrimination have been greatly exaggerated by the opponents of affirmative action.⁴

Affirmative action, used correctly, gives us a measuring stick to determine if we are utilizing the talents of all people in our country. It allows us to see if Asian Pacific Americans, people with disabilities, and older adults are being given opportunities to fully participate. The U.S. Department of Labor's Glass Ceiling Commission found that diversity and inclusion are good for business.⁵

In the "good-old-days," only white men were allowed to have promising employment opportunities. Women were relegated to domestic life and people of color were allocated the low-paying, low-status jobs, regardless of their educational attainment. By only looking at one sector of society, there is no way to ensure the most talented make their way to the top. In the past, the path to upward mobility was barred by racism and sexism. Affirmative action creates equal opportunity and provides a gauge by which we all can measure our success in eliminating these barriers.

Affirmative action programs are not meant to exist for an indeterminable time. When diversity is achieved through efforts to improve opportuni-

ties for everyone on an equitable basis, then such programs should be altered to reflect the changed circumstance. Affirmative action will not necessarily end racism, poverty, or sexism, but anti-discriminatory laws cannot and will not suffice. Affirmative action is a conscious and affirmative commitment to afford and promote equal access to persons of historically discriminated groups. This commitment can make equal opportunity a reality.

For APAs and the LAPD, this commitment will mean that more officers will be available who speak languages other than English, understand the differing cultures, and can do community policing in this burgeoning community. Affirmative action, in whatever form it takes, ensures that groups who continue to suffer from the effects of past and current discrimination are able to obtain redress and make progress. □

1 We do not assert that only APA officers can serve the APA community. However, in a community with 65% of the population born outside of the United States and a low level of bilingualism, hiring APA officers is an effective way of serving this community. In 1995, the LAPD is only 4.2% APA in a city that is over 10% APA.

2 In the last three years, the LAPD has been sued for creating a "glass ceiling," and for pervasive sexual harassment. Both lawsuits allege that racism and discrimination continue to affect hiring, promotion, and retention.

3 White men are: 48% of the college educated workforce, but hold over 90% of the top jobs in the news media; over 90% of officers of American corporations; 88% of the directors; 86% of partners in major law firms; 85% of tenured college professors; and 80% of the management level jobs in advertising, marketing and public relations.

The weekly earnings of white males in 1992 were 33% higher than those of any other group in America.

Whites with college degrees make almost 11% more than APAs, and with high school degrees, whites make almost 26% more than APAs.

APA managers in Silicon Valley earn \$8,000 to \$35,000 a year less than white male managers, even after controlling for education and language ability. APAs were less likely to be in management than whites, and in some cases, than African Americans.

In 1989, U.S. born Asian doctoral scientists and engineers earned only 92% of that of white doctoral scientists and engineers.

4 A report prepared by Rutgers Law Professor Alfred W. Blumrosen for the Office of Federal Contract Compliance Programs shows that there is no widespread abuse of affirmative action programs in employment. It also shows there are only a small number (20) of reported reverse discrimination cases by white males — a high proportion of which have been dismissed by federal courts. By analogy, the 75,000 case backlog at the EEOC will also show that few cases are filed by whites or males alleging "reverse discrimination."

5 Federal Glass Ceiling Commission, Fact Finding Report, "Good for Business: Making Use of the Nation's Human Capital," March 1995.

William H. "Mo" Marumoto — The Interface Group, Ltd./Boyden

"Mo" Marumoto, in addition to serving as Chair of the LEAP Board of Directors, is founder and Chairman of the Board of The Interface Group, Ltd./Boyden, the twelfth largest international executive search firm in the world. Prior to founding the firm in 1973, Mr. Marumoto was Special Assistant to former President Richard M. Nixon and the first Asian Pacific American to serve in the executive level of the White House.

When President-elect Bill Clinton fulfilled his promise to appoint a Cabinet that "looks more like America" it was intended as a statement about the importance of broader ethnic participation in government policy making.

While some may argue over the caliber or credentials of the individuals he selected for positions of power in his administration, it is clear that Clinton was reaching out to enlarge both his constituency and his circle of confidants. He feels strongly that he will benefit by the advice of a more eclectic body of counselors as well as gain a broader base of popular support.

Is there a lesson in this for business? Should Corporate America follow the

With nearly 7,300 seats on the boards of these companies it would seem there might be room at the top for more women and minorities. Yet progress in filling new and vacant seats has been extremely slow.

One alleged reason for this slow progress is said to be the difficulty in finding minority candidates of sufficient stature, with the professional expertise and *savoir faire* of their prospective peers.

This, of course, is nonsense. It is not a problem I have ever encountered as an executive recruiter for some of the nation's leading corporations. Over the past five years I have been able to locate and present women and minority

agricultural and medical experts, and leaders in the fields of science and technology.

Lack of talent is no deterrent. The supply is much greater than the demand. It will remain so until there is a change in attitude and outlook at the corporate level.

Some business leaders cling tight to the conviction that securing or reserving seats for minorities should not be a priority if done simply for the sake of symbolism.

More important to most CEOs than racial representation is the ratio of insiders to outsiders, the professional or financial expertise of members and the chain of succession to the chair. Many hold fast to the belief that board candidates should be selected solely on the basis of quality... and let the racial, ethnic and gender chips fall where they may.

Putting aside any suspicions of latent bigotry, that sounds fair. But is it smart? Not if you believe as does Bill Clinton that the chief executive officer needs the broadest possible advice and counsel he can get.

Symbolism may not be as important in business as in politics, but its value is real. Corporations with minority representation in the governance process are generally perceived to be more modern, progressive and socially concerned.

The presence of women and minorities in the board room is more convincing than spending millions of advertising dollars to communicate with key minority groups (conversely the presence of the absence of minority board members sends another signal).

It is my business to find qualified candidates for corporate positions, not to give business leaders advice or hector them on the value of heterogeneity in the hierarchy. But I know that in today's racially mixed marketplace, Board diversity is a requisite to long term success.

Times are changing and recognition is slowly growing that minorities have an important role to play in corporate governance. The day has come when attitudes must change.

For the most part, Board rooms have remained islands untouched in a sea of social change.

President's lead by trying to improve its record of minority participation in corporate governance?

The fact is that the present record is not very good. People of color are not prominent in the corporate power structure. Even at a time when it has become more *de rigueur* to include minorities in upper management, relatively few serve on the boards of big U.S. companies. For the most part, board rooms have remained islands untouched in a sea of social change.

There are, for example, 131 Hispanics on the board of all of the 806 largest firms. Blacks do better, but their numbers still total only 225. Asian Americans are represented by a scant 65 and American Indians are nonexistent.

Women alone have made progress in penetrating the inner sanctums of business. There are now nearly 500 represented on the boards of the 806 biggest companies.

candidates who fully meet the demanding requirements of blue-chip companies including a consumer goods company, a telecommunications corporation, an energy company, and a computer organization.

Neither was it greatly difficult for President Clinton to find competent people from minority groups capable and willing to serve at the highest levels of government. Members of his Cabinet—who will be responsible for managing more employees and bigger budgets than most corporate CEOs—include four women, four African Americans and two Hispanics.

It is almost miraculous to see how many well-qualified minority candidates appear in response to a search assignment. Washington, of course, is one of the best sources for executive-level minority talent.

Candidates often include former members of congress, senior-level government officials, trade experts, lobbyists,

Benjamin Seto — Asian American Journalists Association

Benjamin Seto is the national vice president of the Asian American Journalists Association, the nation's only media affiliation group serving the interests of Asian Pacifics. He is also a business reporter for the Fresno Bee in California.

In discussions on a diverse newsroom, everyone from editor to reporter agrees that the goal of reflecting the community we report on is a noble one. The media's success rests on its ability to understand the many sensibilities that drive the news.

Problem is, no one knows the quickest and simplest route to this microcosm of the world. The news industry, like others in the private sector, has attempted various programs that have their roots in the mandate known as affirmative action. Today, a wave of discontent is threatening to uproot these policies, leaving them to shrivel into obscurity without the slightest hints of an alternative.

The Asian American Journalists Association, an educational and professional organization, has never taken a position for or against affirmative ac-

inclusion of one qualified minority candidate for every opening, or recruiting applicants at minority journalism job fairs.

Despite these voluntary efforts, the American Society of Newspaper Editors reported that in 1994, journalists of color still made up only 10.49% of all those employed in newspapers across the country. This annual statistic — used as a thermometer of the industry's diversity efforts — has inched slowly through the years and, at this point, appears far from reaching the ASNE's goals of parity set for the year 2000. Figures for the radio and television media are no better.

It is clear that much more needs to be done, and solutions that seemed so simple are now complicated by the journalists' innate cynicism. Reflecting the community we report on, our news-

*News organizations, to their credit,
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tion — a program of preference largely associated with government contracts and university admissions. But it has as its cornerstone the mission to create opportunities for journalists of Asian descent. Its job is not simply to encourage Asian Americans to enter the profession, but to knock down doors and shatter glass ceilings. To some this may resemble the battle cry of affirmative action. To others, it's the route to a diverse newsroom.

News organizations, to their credit, have attempted voluntary programs to increase the number of women and minorities in their ranks. In varying degrees of success, these efforts have

rooms are also filled with discussions focused on so-called preferential treatment. Stories of the "angry white male" have materialized in newsrooms where white male journalists were required to attend sensitivity training without the proper foundation of understanding why they were there. At the same time, journalists of color hired under the banner of diversity feel pressured to work harder to remove the false impression of being there for the color of their skin rather than for the quality of stories they write or edit.

So has affirmative action failed?

The greatest challenge for everyone, those for and against affirmative action, is to act as if years of institutional dis-

crimination does not exist. That the color of the person next to you has no bearing on your attitude or treatment of that person, and that he or she will be judged by the stories they write, edit or broadcast and the way they reflect the world.

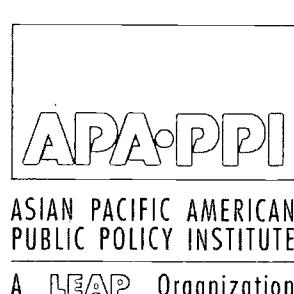
But until that happens, every tool used to keep diversity in the minds of decision-makers in all facets of society should be maintained. Unfortunately, the debate surrounding affirmative action has cast a shadow on the good that it has done. Men and women, from various racial and socio-economic backgrounds, have joined the profession and have added a different and unique perspective to the workplace. Stereotypes and ignorance are slowly being chipped away through simple exposure.

Yes, affirmative action may need to be modified or changed. All social policies must be made current to today's society. But I'm afraid that tossing it out in a heated moment of frustration is not the answer.

Erasing affirmative action from our minds would only deflate the small victories of the past. It would be different if starting from the beginning meant that everyone is equal, no one better than the other, all with something to share. But unfortunately, the difficulty with starting fresh is that we cannot honestly pledge that we come with open minds, freed of all the fears of the things we don't understand.

It's a tough road ahead to make affirmative action work, but it's a road that leads to that one common goal. Every journalist with that one good story works at it, checks details, verifies facts, and slowly, but surely, meets the deadline for the task at hand. ■

"a level playing field?"



Impact of Anti-Affirmative Action Measures on Our Society

Antonia Hernandez — Mexican American Legal Defense & Educational Fund (MALDEF)

Antonia Hernandez is President and General Counsel of the Mexican American Legal Defense and Educational Fund (MALDEF), a national organization dedicated to protecting the rights of Latinos in the U.S. Ms. Hernandez is recognized as one of the nation's leading Latina advocates.

As a civil rights leader, I will be the first to acknowledge that I have been helped by affirmative action. I put myself forward as an example of an affirmative action beneficiary to remind others that many of us, minorities and women alike, have gained the opportunity to succeed in our field of choice through programs, like affirmative action, that seek to eliminate discrimination. Too many have forgotten that affirmative action has assisted them in overcoming the barriers of discrimination. These same people, as well as many others, have also forgotten that those barriers of racial and gender discrimination are still with us today. Moreover, while I and countless others, from the Supreme Court Justices on down, have personally benefited from affirmative action, society as a whole has gained in an equivalent manner from affirmative action — programs that, by adjusting for the effects of discrimination, lead to the selection of those with the greatest potential, the greatest merit.

These reminders are necessary because of unwarranted recent attacks on our national commitment to equal opportunity and affirmative action. That commitment — which has been of relatively brief duration in the context of our national history, blemished by officially-sanctioned discrimination — should remain unquestioned. To claim that affirmative action allows unqualified men and women to gain access to jobs and to schooling is a divisive and wholly fallacious attack on the abilities and struggles of minorities and women. It is an insult to claim that these men and women, who would gain admittance or employment through their own merit in the absence of discrimination, are not qualified to engage in their chosen field. It also unfairly diminishes the contributions of the many who have struggled against and broken through discriminatory barriers, which would not have been possible without affirmative action. We must all reject this implicit assault on ourselves, our friends, and colleagues. We defend ourselves and our community when we rise

to defend affirmative action. Remembering our history and its significance will grant us ownership over this debate.

We can no longer afford to hide behind a "sanitized" debate that does not recognize that affirmative action programs began and are still needed because discrimination still exists in our nation. History indicates that without programs that assist qualified minority men and women to gain opportunities, many of us would not be where we are today. Let's face it: in the past, being a woman or being Latino, Black, or Asian meant that you were not even considered for a job or an education. Acknowledging that race, gender and ethnic discrimination continue to play a role, albeit diminished from the worst days of the past, in employment, university admissions and other opportunities, is an important first step in defeating the myth that affirmative action is about quotas, preferences, or set-asides for unqualified individuals.

All Americans want a colorblind and genderblind society. This is our goal. We are on the right path, but still far from this goal. As we travel toward our goal, we cannot be blind to continued inequality. While we have done away with some of the most blatant forms of discrimination in recent years, this country has only now arrived at the most difficult point in the struggle for full equality. This is no time to turn away from America's historical commitment to fairness and equity. We know too well that discrimination is not just a thing of the past. We have not gone "too far" in eliminating inequality.

Our country is in a great transition and is finding this transition extraordinarily difficult. This is to be expected. Diversifying American society will continue to be a very difficult endeavor. As we look into our future, we see that keeping affirmative action programs alive in our educational systems is a key to facilitate this transition and diversification for all of us. Ensuring that all Americans understand that affirmative

action is an essential component of equality is a task for each of us. Educating our communities that affirmative action is about opening doors, about inclusion not exclusion, about contributing to our changing society is our responsibility, no one else's.

At the same time, we must be aware that affirmative action is only a tool, a piece of the whole. Its programs are intended as marginal assistance to combat discrimination and create a level playing field for all. It is not a complete solution or a substitute for other efforts to improve opportunities for women,

This debate is not an easy one. Detractors will claim that affirmative action takes away from more deserving students, or allows unqualified persons to enter the halls of higher learning at the sake of more qualified individuals.

We must firmly reject these claims. Too many detractors denounce without the facts. According to the University of California's undergraduate admission policy, all eligible applicants who choose to enroll at the University of California are offered spaces. The admissions criteria at UC have gone up 5 times in the past 13 years. There is no

Asian Americans should be aware of the legal landscape on which the political battle is being fought and where they have been positioned.

The Supreme Court decision concerned one of many "set-aside" statutes designed to increase representation of "socially" and "economically" disadvantaged individuals and small businesses involved in government contracting. In technical terms, the ruling established a "strict scrutiny" standard for all racial classification, whether formerly characterized as "benign" or "invidious." In the ruling, the court did not strike down the particular program, but instead decided to send the dispute back to the lower courts to determine whether it passed this "strict scrutiny" test.

The majority opinion by the court thus clarifies the confusing standards which had governed affirmative action. Previously, the validity of the programs turned on whether they were state or federal, public or private, quotas or goals, and numerous other factors. Furthermore, the treatment of Asian Americans varied from wholesale inclusion to outright exclusion, and from active discrimination in a straightforward sense to schemes that attempted to benefit some Asian Americans by distinguishing among different ethnic groups or different fields of study and work. In contrast to many other programs, the "set-aside" regulation included Asian Americans.

Like many judicial decisions, however, the latest ruling may turn out to be a source of surprises. Since there will likely be an intensive process of considering the evidence, it may strengthen rather than weaken affirmative action programs that ultimately meet the higher standard.

According to the opinion, if the fact-finding process by the lower courts reveals regular race discrimination against non-whites in bidding for federal government contracts, then it may be appropriate to address the problems with a systematic response in turn focusing on race — if it is done carefully. Indeed, under the circumstances, being blind to race renders racism itself invisible.

This is no time to turn away from America's historical commitment to fairness and equity.

minorities and other disadvantaged people. Programs that address the needs of socially or economically disadvantaged persons are important on their own merit. We must reject the false dichotomy that pits affirmative action against such other meritorious policies. There is no choice between the two. Both approaches — addressing gender and race discrimination and compensating for socioeconomic disparities — are needed to ensure full and fair opportunities for everyone.

As the future of America is changing, so must our efforts to protect the rights of our children. The affirmative action programs for our young adults in institutions of higher education are working. Study after study, like the one for the Higher Education Committee of the California Assembly, find that without affirmative action programs to achieve greater diversity the under-representation of minorities will likely worsen and become permanent.

doubt that UC is teaching highly qualified individuals who have all earned admission.

Furthermore, the top 12.5 percent and the top 33.3 percent of high school graduates are immediately entitled to a place at the University of California and California State University systems, respectively. No one is currently being denied a place. More than 95% of all students admitted to the UC system are fully eligible in terms of their academic course work scores and their admission test scores.

These numbers and figures are only the beginning. The data stands on its own merit, but it is up to all of us to share the message. Affirmative action is not causing "reverse discrimination."

Affirmative action is assisting all of us in diversifying America. An America where "Opportunity for All" is not merely an aphorism, but a reality. ■

Affirmative Action Choices

Frank H. Wu — Howard University School Of Law

Frank H. Wu is an assistant professor of law and the first Asian American on faculty at Howard University law school. He is the author of *Neither Black Nor White: Asian Americans and Affirmative Action, a comprehensive legal analysis of the subject*. He also has written for The Washington Post and is currently a columnist for Asian Week.

The role of Asian Americans in race relations was problematic well before it became prominent. Now, unfortunately, Asian Americans seem to be stuck in the middle of the affirmative action debate.

With the recent Supreme Court case, *Adarand Contractors v. Peña*, the affirmative action controversy has taken a turn. Whether that turn is positive or negative, practically and symbolically, remains to be seen. In either event,

Despite all its rhetorical caveats and solicitude for the disadvantaged, the standard set by the new case is nonetheless potentially dangerous. According to the decision, it is not only concededly "benign" programs with a racial element that may be permitted, but also more suspect classifications based on race. If

Just as Asian Americans should be part of the debate, they also can be used for the sake of argument. Critics of the government programs meant to remedy racial discrimination point at Asian Americans in order to make a variety of arguments. Many of the critics of the programs believe in the model minor-

Asian Americans should realize that while they face discrimination, African Americans fare worse by almost any measure, whether historically, in contemporary stereotyping, or as shown by social science data. Moreover, Asian Americans stand to gain very little by denying African Americans meaningful socioeconomic opportunities. Ironically, where Asian Americans face maximum quotas or glass ceilings in education and employment, the cause typically is a minimum quota or informal floor for whites — not for African Americans. That was the case in the controversy over college admission and in the Lowell high school situation, and it may well be the hidden truth elsewhere.

Given the tensions that run through the affirmative action debate, Asian Americans should see that they can be helped and hurt, and sometimes both at once, by the legal recognition of race. Whether they support affirmative action or oppose it, they owe it to themselves as well as the rest of society, to consider the consequences of either extreme color-consciousness or extreme color-blindness. The challenge is to transcend race without ignoring racism, without denying differences that are valuable, and without suggesting subtly or otherwise that everyone should be or pretend to be white. In the process, the political awakening of Asian Americans is at hand. ■

it is interpreted to reach conservative results, the opinion may in legal terms effectively reduce affirmative action to the equivalent of chattel slavery.

An interesting but largely ignored aspect of the majority opinion and the dissenting opinions is their heavy reliance on the precedent of the Japanese American internment. This affirmative action case contains an acknowledgment by the high court — its first lengthy statement to the effect — that the governmental actions in World War II instituting the internment were wrong and were based on prejudice.

As important is the fact that Asian Americans are being considered. Generally, Asian Americans, along with other non-black racial minority groups, have been relegated to footnotes if they are mentioned at all in judicial decisions related to race. In the famous *Bakke* case, for example, there is a note stating that including "Orientals" in affirmative action at medical school "is especially curious" because of the "substantial numbers... admitted through the regular admissions process." The neglect of Asian Americans occurred despite the late Justice William O. Douglas observing in passing in the earliest affirmative action case, "there is no Western state which can claim that it has always treated Japanese and Chinese in a fair and even-handed manner." Justice Douglas, though, thought discrimination against Asian Americans served as an argument against affirmative action: if Asian Americans were included, too many others might make claims as well.

ity myth of Asian American cultural assimilation and economic advances. Some observers assert that Asian American success shows that affirmative action is not needed. Other commentators assert that Asian immigrants should not be given any public benefits, special or otherwise, because to do so would be unfair toward native-born American minorities.

As all too often happens, Asian Americans are being pitted against African Americans. Asian Americans are encouraged to view African Americans, and programs focused on them, as threats to their own upward mobility. African Americans are led to see Asian Americans, many but not all of whom are immigrants, as another group that has usurped what was meant for them.

We Won't Go Back

Lillian Galedo — Filipinos For Affirmative Action

Lillian Galedo is the Executive Director of Filipinos for Affirmative Action, a community-based, nonprofit organization based in the San Francisco Bay Area. Ms. Galedo is also the co-chair of Filipino Civil Rights Advocates, a recently formed organization focusing on national civil rights issues for the Filipino community.

In March, Governor Pete Wilson, who rode into a second term on a wave of anti-immigrant hysteria he helped create with Proposition 187, announced his support for the anti-affirmative action proposals. As a Republican presidential candidate, he is obviously planning to repeat the strategy.

This so-called "California Civil Rights Initiative" is a dishonest name. In fact, the initiative attacks civil rights. Its premise is that our country has outgrown affirmative action, that the kinds of discrimination that gave birth to it in 1964 no longer exists, and that affir-

mative action is unfair to whites, and even to Asians. Laws which prohibit overt acts of discrimination, its supporters claim, should be enough to protect those who have historically been its victims.

But are these laws alone enough? Not according to phone calls and letters that we regularly get from Filipino employees. We recently received a letter from an employee of the State Compensation Fund who tells us "still a great majority (of Filipinos) are in clerical support positions even if they have the experience and education required (for

professional or management positions)." "The current criteria for hiring and promotion is 'whom you know' and 'what you are' (group)." A 1993 Equal Employment Opportunity Commission (EEOC) report on California public hiring showed that 76% of new hires in the highest job category of public jobs — 'officials and administrators' — are white. African Americans hold 8.9 %, Hispanics 8.4%, and Asians 6.3% of these top jobs. In the lower rung hires (service and maintenance jobs), African Americans are 19%, Hispanics 24.7% and Asians 10%.

Affirmative action was meant to correct pervasive patterns of discrimination, like those in the Oakland Fire Department. In 1960, before affirmative action, there were no Asian Pacific firefighters in Oakland. In the early 1970s, a court ordered the department to set up an affirmative action program. The first Asian firefighter was not hired until 1972; by 1980 there were 5 Asians. By the early 1990's, when Asians had reached 15% of Oakland and Alameda County's population, there were 22 Asians. "It took over 20 years, even with affirmative action, to bring the number of Asians up to 5% of Oakland's firefighters" says Oakland firefighter

nomic support had already dried up. The number of fall enrollments of Filipino students at UCB has since dropped from 113 in 1992 to 57 in 1994.

Affirmative action has also helped many whites. Hiring in the fire department used to be a "family affair." Those hired were the sons and relatives of other firefighters. Affirmative action made it easier for white workers who weren't relatives of firefighters or friends of the boss to break through those barriers. In the same way, economic assistance programs in support of affirmative action in universities have helped many working-class whites get an education.

At the core of affirmative action is the idea that ways can be designed to move more quickly towards equality, rather than to wait for each generation to take a tiny step. The great majority of people in this country now believe that women and minorities should be represented in all facets of our society — blue collar, white collar, management, elected officials, even the Supreme Court.

Ending affirmative action is a desperate attempt to reverse the gains that have been made. The motive is the

cans have become subject to technological changes and a volatile global economy. The economic future of all Americans is insecure.

The day when a person could work for the same employer for 25 to 30 years and retire from that job is practically non-existent. The average American will be on a job from only three to five years. An eighteen-year-old entering today's labor market will go through four to six career changes before retirement. Twenty-five percent of job titles for the year 2000 are not even known to us today.

Meanwhile, the gap between the rich and the poor continues to widen, with the wealthy one percent of our country owning 40% of our country's wealth.

Ending affirmative action will not change these emerging conditions, nor will ending affirmative action save jobs which have been moved outside the country or eliminated because of corporate reorganization, urban flight, and changing economic relationships with other industrialized countries. Ending affirmative action during this major economic transition is aimed at giving an advantage back to those who benefit from inequality and racism. As Asian Pacific Americans, we can't let that happen. We must defend affirmative action so that when the dust settles on these economic changes, we will not be at the bottom.

To achieve equality, we must work in alliance with others who have stepped forward to continue the struggle. That unity must be based on renewing our commitment to the premise that prompted affirmative action thirty years ago: to end racism we must take measured steps towards equality. ■

...We can't let that happen. We must defend affirmative action so that when the dust settles on these economic changes, we will not be at the bottom.

Antonio Edayan, hired in the early 1980s. "Would we have achieved this without affirmative action? I don't think so."

When affirmative action programs began at UC Berkeley in the 1960s, they brought the sons and daughters of Filipino workers into our publicly-funded universities for the first time. These programs targeted low income families, and included support for Filipino students while they learned. As a result, a generation of working-class Filipino youth got a UC education that would otherwise have been unavailable to them. Then, in 1992 Filipinos were dropped from the list of ethnic groups on UC's affirmative action list. The eco-

worst kind of political opportunism. Whipping up racism has become a political strategy — called the "wedge issue."

The authors of this strategy recognize that there is a desperate anger among many people over the decline in their standard of living and at falling hopes for a secure job and future. Rather than using this anger to force political and economic changes to solve real problems, these opportunists use it as a weapon to win power. A way to force people to fight over diminishing jobs and falling wages, instead of addressing the real cause: the economy. Affirmative action has had no role in lowering our standard of living. All Ameri-

"moving toward a colorblind society?"

APA•PPI

ASIAN PACIFIC AMERICAN
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A LEAP Organization

Kent Wong — Asian Pacific American Labor Alliance

Kent Wong is a founder and the National President of the Asian Pacific American Labor Alliance, the first nationwide Asian Pacific labor organization within the AFL-CIO. He is also Director of the UCLA Center for Labor Research and Education and previously worked as staff attorney for the Service Employees International Union, Local #660.

The Asian Pacific American Labor Alliance, a national organization of Asian Pacific American workers, is committed to defending affirmative action in coalition with women, people of color and all people of conscience who believe in ending discrimination and inequality.

Our support of affirmative action is based in part on the long legacy of discrimination against Asians. Beginning over 100 years ago, Asian immigrants to the U.S. were subjected to racist immigration laws, including discriminatory quotas that lasted until the 1960s.

The discrimination facing Asian Pacific Americans is part of a larger problem of inequality in our society. Ninety-seven percent of senior corporate executives are white males. At the other end of the spectrum, nearly half of all African American and Latino children live in poverty. Affirmative action is an important method to address past and present discrimination, and to increase the access of women and minorities to employment, education, and government opportunities.

It is no surprise that affirmative action is under widespread attack today. From

Asian immigrants from generations past have been denied citizenship, denied the right to vote, denied the right to own land, denied the right to marry non-Asians, and denied equal employment opportunities.

Asian immigrants from generations past have been denied citizenship, denied the right to vote, denied the right to own land, denied the right to marry non-Asians, and denied equal employment opportunities. The internment of Japanese Americans during World War II was a shameful episode in American history, an event that has affected Asian Pacific American communities to this day.

Today, many Asian Pacific immigrant workers face exploitation in low wage jobs in the service and light manufacturing industries. Abuse of basic labor laws, including wage and hour provisions, are common. Many lack health care coverage and adequate job benefits. Many are discriminated against because employers believe that they look or sound foreign. Even Asian American college graduates who have obtained middle-income jobs frequently confront the "glass ceiling," and are denied promotional opportunities due to employment discrimination.

Richard Nixon's "Southern Strategy" to George Bush's "Willie Horton" ads, conservatives have successfully used "wedge" issues, particularly those with racial subtexts, to court undecided voters who would normally be opposed to the Republican party's pro-corporate and anti-worker agenda. This conservative economic agenda, which is creating staggering income inequality in our society, includes tax breaks for wealthy corporations and individuals, corporate downsizing, the movement of jobs overseas, anti-union legislation, keeping the minimum wage low, blocking mandatory health care, cutting federal safety net benefits, increasing part-time and temporary jobs, deregulating health and safety, and reducing economic resources available for education, training, and infrastructure development.

In order to advance their economic agenda, Republicans are promoting divisive and distracting myths about immigration and affirmative action. They claim that most immigrants are taking

jobs from others, are living off welfare and government handouts, and are threatening our lifestyle and culture. They claim affirmative action gives unqualified individuals an unfair advantage and establishes arbitrary "quotas." These attempts to scapegoat immigrants and affirmative action are unfair and untrue, but have received little critical evaluation in the media.

The attack on affirmative action and immigration by politicians like Governor Pete Wilson of California is rooted in political opportunism. But there is something more troubling taking place. Racism is once again on the rise in America. The Supreme Court, dominated by Reagan and Bush appointees, recently issued three far-reaching decisions undermining minority contracting, school desegregation, and congressional districts with Black majorities. The Republican "Contract With America" will disproportionately harm minority communities by dismantling federal benefits and programs that these communities need. Many recent immigration "reform" efforts are motivated by a desire to reduce the number of Latinos and Asian Pacific Americans who come to America. As Congresswoman Maxine Waters recently said, "It feels as if the Supreme Court, legislative bodies, and organized right-wing groups have all decided their worst enemies are of color."

Our defense of affirmative action, therefore, is rooted in part in the historic experience of racism and discrimination faced by Asian Pacific Americans and others in this country. It is also rooted in an understanding that this racism is still with us and is increasing in today's intolerant political and social environment.

We urge all Asian Pacific Americans to work to support affirmative action in coalition with women, people of color and other minorities. As with all these groups, our success as a community is ultimately tied to the overall success of the civil rights movement. We must fight to defend affirmative action, not just because it helps Asian Pacific Americans overcome work place discrimination, but because we will never abandon the dream of justice and equality for all Americans. □

The Face Of Affirmative Action

Warren T. Furutani — Warren Furutani & Associates

Warren T. Furutani served for eight years as a member and president of the Los Angeles City Board of Education. He has long been a leading and outspoken advocate of civil rights issues for communities of color and has championed Asian Pacific causes since the 1960s.

The most recent controversy around affirmative action will be tested at the polls in November with the California Civil Rights Initiative (CCRI). In my opinion it is no coincidence that this initiative is attempting to follow in the footsteps of Proposition 187. In both cases, I contend that whatever side successfully defines the issue and connects it with the most compelling human image will prevail.

Everyone remembers the impact of the mean spirited "Willie Horton" ads during the Dukakis Presidential Campaign. More recently, everyone saw and was inundated with the grainy infrared video shots of hordes of "illegal immigrants" streaming over the borders into

The title of the bill itself has seized the initiative in this political contest. Nowhere is the term affirmative action used in the CCRI. The term preferential treatment is instead being used synonymously with the term affirmative action. A report and poll by the Feminist Majority Foundation points out that if these two terms become interchangeable the battle is already lost, but if the terms are disconnected, the support for affirmative action programs that promote equal opportunity is very strong and positive.

Therefore, we must define affirmative action for what it really is, a program for equal opportunities, not quotas or preferential treatment. It is a vehicle for

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procurement of public contracts.*

California during the Proposition 187 campaign. Already ads have been run, sponsored by Senator Jesse Helms during his re-election campaign, showing a young white male tearing up a rejection slip with the message being that a less qualified women or minority got the job because of affirmative action. These images defined the issues and pushed the emotional buttons to which the voters responded. We must redefine the issue and forge a new image that people will embrace.

Defining the issue and connecting it to a positive image is the key to overcoming the CCRI. In this regard we are already behind the eight ball and playing "catch up."

fairness and equality for groups who have been historically discriminated against and who have been woefully underrepresented in the areas of education, employment and procurement of public contracts.

We have seen the unfortunate tendency of public and private systems to revert to the status quo and institutionalized racism when not under public or court-mandated scrutiny.

In relationship to the image factor of these debates, we need to put a human face on the affirmative action issue. Interestingly, Speaker Willie Brown has extricated himself from the battle because of this concern. After clearly es-

tablishing the parameters of the discussion on affirmative action, he conceded that should he become the personification of the issue, it would be detrimental to the cause.

The Proposition 187 campaign clearly demonstrated the critical role of the human image factor. As it seemed the momentum was shifting toward the initiative's defeat, the image of hundreds of individuals waving Mexican flags at anti 187 rallies took center stage. This sent a reactionary message and galvanized the pro 187 forces. The true image of thousands of immigrants finding a better life and working hard to contribute to their own and this country's future would have been the more compelling image.

Consequently, the image we need to portray in support of affirmative action is one that reflects the thousands of success stories that affirmative action programs have produced. Let us base the human image on the positive effects of equal opportunity whereby those given the chance succeeded and returned to their humble roots to share their bounty, knowledge and resources.

Let us remind the public that although admitted through these programs, the graduation requirements were equally satisfied, the accountability for getting the job done or the contract fulfilled was the same for everyone.

Lastly, after defining the issue and putting a positive human face on it, we need to seize this opportunity to reaffirm affirmative action from the point of view of the future, not the past. It seems the anti-forces want to go back to the 50's, to a time where everyone was colorblind, those "good old days."

Many of the proponents of affirmative action seem to want to go back to, and use the rhetoric of, the 60's, the "movement days." The challenge has got to be how we move the agenda of affirmative action to address the issues of equality for a society vastly changed from the 50's and 60's.

Let us expend our energies not on reacting to the latest initiative from the political right, but on a future-oriented agenda based on the timeless principles of fairness and equality for all. ■

"moving toward a
colorblind society?"

Jackie Young — Office Of The Governor, Hawaii

Jackie Young is the Director of the Governor's Office of Affirmative Action for the State of Hawaii. Ms. Young is also an adjunct professor at Hawaii Pacific University, an independent management consultant/trainer, and co-host of the television show, "Sound Off: On the Road with Jackie Young and Janice Wolf."

Affirmative action is in the political arena. So the weapon of choice for women and minorities is political action. A conservative Supreme Court has effectively narrowed the need for progressive measures in affirmative action plans. A Republican-dominated Congress is not expected to legislate support for programs that challenge and change old patterns of sexism and racism in the workplace. Now Republican presidential candidates are showing their election year colors by bashing affirmative action, confident that their rhetoric is tracking public polls on the issue. In California, a bellwether state, the Governor has used his executive powers to attack affirmative action while college professors lead the populist initiative.

This is a mid-life crisis for affirmative action. We know from our long history of immigration that it takes three generations to fully assimilate into a new culture. Affirmative action is currently

ues and of perspectives has long been part of our reality and through our struggles for racial and gender harmony, we continue to express a diversity of hopes for the future. One criticism of Hawai'i's state government has been that employees of Japanese descent dominate the labor force. Historically, state government has served as a fair employer for this group, whose prominent members joined thousands of people of Japanese descent living in the U.S. and Canada, and who were unjustly incarcerated during the racist hysteria in the early months of World War II.

But statistics generated for affirmative action plans point to the under-representation of Filipinos, Hawaiians and Whites in the state's workforce. Over the past ten years, there have been substantial increases of these groups in state government and if these trends continue, the state government workforce will eventually resemble our

Hawai'i still remains an exception and, perhaps, a view of the future. Unlike many other states, we have not had to "discover diversity."

at 1.5 generations. While barriers at the entry level of the workforce have diminished over time, the terms "sticky floors," "glass walls," and "glass ceilings" are meaningful metaphors in describing where women and minorities are today.

In Hawai'i, where the majority of marriages are interracial, there are still no women and very few Asian or Pacific Islanders among Hawai'i's highest paid executives, who are predominantly white and male. Many of the major corporations are multinational and based elsewhere. This kind of insensitivity to diversity in a multicultural state has a dampening effect on the workforce.

Yet, Hawai'i still remains an exception and, perhaps, a view of the future. Unlike many other states, we have not had to "discover diversity." Diversity of val-

population at large. However, a gender gap in wages persists in the workplace as full-time male workers still average much higher pay than their female counterparts.

In the executive, judicial and legislative branches, Asians and Pacific Islanders hold powerful positions and a critical mass of women have emerged in all three branches. Affirmative action works in Hawai'i to constantly strive for balance, for inclusion and diversity.

But the key is in honoring the value of inclusion while aiming for a critical mass. Abuses have been committed in the name of affirmative action but as journalist William Raspberry notes, "...if merit, as measured by test scores, is a value worth preserving, so is inclusion, as measured by actual — not merely theoretical opportunity." Critical mass, a concept from physics where

a minimum amount of radioactive material is needed to produce a nuclear reaction, can be applied to both women and minorities as both groups are just emerging as a visible and powerful force in America. Not yet a "critical mass" in politics, women and minorities need political clout in order to confront the affirmative action backlash.

In 1872, Elizabeth Cady Stanton testified before a Senate Judiciary Committee, "We have declared in favor of government of the people, for the people, by the people, the whole people. Why not begin the experiment?" Whereas, it took years of legislative efforts to finally obtain the women's right to vote in 1920, President John F. Kennedy first introduced the concept of "affirmative action" in 1961, and truly began Stanton's experiment.

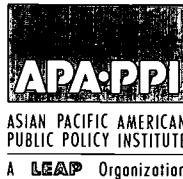
We are not yet a government of the people. How much longer must affirmative action last? Only one and one-half generations of women and minorities have benefited from the transitory goals of affirmative action. Now, only concerted political action can help us sustain our gains and keep the doors open for the next one and one-half generations. ■

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